Petition

81-1348

Office - Supreme Court, U.S.
FILED
JAN 15 1982
ALEXANDER L. STEVAS,
CLERK

No.

In the Supreme Court of the United States

October Term, 1981

FALLS STAMPING & WELDING COMPANY,
Petitioner,

vs.

THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

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QUESTIONS PRESENTED FOR REVIEW

I. Whether a union has standing to maintain a damage action on behalf of discharged strikers pursuant to Section 301, Labor Management Relations Act.

II. Whether an employer has a federal substantive right to discharge employees striking in violation of the collective bargaining agreement.

PARTIES

The petitioner is The Falls Stamping & Welding Company, an Ohio corporation, located in Cuyahoga Falls, Ohio.

The respondents are The International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, and its Local Union No. 1194, United Automobile, Aircraft & Agricultural Implement Workers of America, and Thomas E. Heffernan, president of Local Union No. 1194.

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No.

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FALLS STAMPING & WELDING COMPANY,
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vs.

THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

The petitioner Falls Stamping & Welding Company respectfully prays that a writ of certiorari issue to review the judgments and opinions of the United States Court of Appeals for the Sixth Circuit entered in this proceeding.

OFFICIAL REPORTS OF OPINIONS BELOW

Falls Stamping & Welding Co. v. UAW, 416 F. Supp. 574 (N.D. OH. 1976) (Printed in Appendix at p. A7).

Falls Stamping & Welding Co. v. UAW, 575 F.2d 1191 (6th Cir. 1978) (Appendix p. A1).

Falls Stamping & Welding Co. v. The International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, 485 F. Supp. 1097 (N.D. OH. 1979).

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THE COURT IS INVOKED

Petitioner seeks review of two orders of the Court of Appeals for the Sixth Circuit: (1) An order and judgment reversing the district court's vacation of a labor arbitration award and remanding the case to the district court, dated May 24, 1978 (Appendix page A1); (2) and an order affirming the district court's judgment for damages for 78 employees, dated October 22, 1981 (Appendix page A81).

This Court has jurisdiction to review the Questions Presented by virtue of the provisions of United States Code, Title 28, §1254.

STATUTORY PROVISIONS INVOLVED

1. United States Code, Title 29, §185, §301 Labor-Management Relations Act:

Suits by and against labor organizations

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

2. United States Code, Title 9, §10:

Arbitration; vacation; grounds; rehearing

In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(a) Where the award was procured by corruption, fraud, or undue means.

(b) Where there was evident partiality or corruption in the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

3. United States Code, Title 9, §11:

Arbitration; modification or correction; grounds; order

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

STATEMENT OF THE CASE

Petitioner manufactures parts, primarily for the automobile industry in Cuyahoga Falls, Ohio. Petitioner's approximately 90 production and maintenance employees were represented for purposes of collective bargaining by the respondents The International Union, United Automobile, Aircraft & Agricultural Implement Workers of America and its Local Union No. 1194, United Automobile, Aircraft & Agricultural Implement Workers of America, hereinafter referred to as the "unions".

On September 9, 1975, petitioner's employees commenced a strike in violation of the terms of the collective bargaining agreement which provided that:

> During the term of this Agreement, the Union, its officers and stewards shall not instigate, promote, sponsor, or engage in a strike, slowdown, stoppage of work, or any other interruption of production. In the event any employee or group of employees covered by this Agreement participate in a strike, slowdown, stoppage of work, or any other interruption of production, the Union shall immediately, upon being notified by the Company, instruct any such employee or group of employees to resume work immediately. The Company shall have the right to discharge or otherwise discipline any employee who does engage in a strike, slowdown, stoppage of work or interference with Company's operation during the term of this Agreement any discipline or discharge as a result of the foregoing is subject to the grievance procedure.[1]

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1. The collective bargaining agreement has not been reproduced in the Appendix as there is no dispute regarding its provisions.

On September 11, 1975, the United States District Court for the Northern District of Ohio, Eastern Division, issued a temporary restraining order enjoining the unions and the employees from striking and picketing. The strike and picketing continued after the issuance of the temporary restraining order and the petitioner notified the strikers on September 13, 1975 that they must return to work by September 16, 1975 or be terminated.

The strikers did not return to work on September 16, 1975, and they were terminated by the petitioner.

The unions filed and processed grievances for approximately 90 discharged employees.

On November 25, 1975, the district court entered an order for a permanent injunction specifically finding that the members of the unions had "participated in a strike/walkout in violation of the no-strike clause."

The grievances were submitted to an arbitrator on May 28, 1976, pursuant to the provisions of the collective bargaining agreement, which provided, in part, that:

> The arbitrator's powers shall be limited to the application and interpretation of this Agreement as written. He shall at all times be governed wholly by the terms of this Agreement and he shall have no power or authority to amend, alter or modify this Agreement in any respect or shall he consider any statute or laws not specifically incorporated herein. . . . The arbitrator's decision shall be final and binding upon the Union, Company and employees.

The union and the employees asked the arbitrator to reinstate all of the discharged employees to employment with seniority and back pay for the period of unemployment. Testimony and evidence were submitted to the

arbitrator over a nine day hearing and on May 28, 1976, the arbitrator, and his award provided:

> The grievances are sustained in part as follows: All discharged employees . . . are reinstated with seniority . . . but without back pay, effective not later than five working days from receipt of this Award (Appendix, pages A79-A80).

The arbitrator found that the strike was in violation of the no strike clause of the collective bargaining agreement and predicated his order of reinstatement on the finding that the petitioner had "unclean" hands, which caused the employees to take matters into their own hands, hence, "the penalty of discharge was inappropriate." (Appendix, page A78).

On June 7, 1976, the petitioner filed a Petition To Vacate and/or Modify Arbitration Award pursuant to the Arbitration Act, United States Code, Title 9, §10. The unions filed an answer and two cross-complaints: One for an affirmance of the arbitrator's award; the second counterclaim for damages in the amount of one million dollars for failing to reinstate the strikers on the date ordered by the arbitrator.

On July 6, 1976, the district court entered an order and judgment granting petitioner's Petition to Vacate holding that the arbitrator had no power to order the reinstatement of strikers in view of the clear provisions of the no strike clause (Appendix, page A17). The judgment also granted judgment for the petitioner "against defendants on the latters' counterclaims" (Appendix, page A17).

The unions appealed the district court's order and judgment vacating the arbitration award to the United States

Court of Appeals for the Sixth Circuit. The union did not appeal the judgment dismissing the second counterclaim for damages for the discharged employees.

The court of appeals, in reversing the district court, did not agree with the decision that the arbitrator had no authority to reinstate the strikers. The court of appeals noted that the no strike clause concluded with a statement providing "any discipline or discharge would be subject to the grievance procedure." The court of appeals held, on the basis of the foregoing and that the district court could not review the arbitrator's decision pursuant to this Court's decisions in the Steelworkers' Trilogy: *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960).

The case was remanded to the district court "with instructions to reinstate the award of the arbitrator" in the court of appeals' decision dated May 24, 1978 (Appendix, page A3).

Pursuant to the court of appeals' decision the petitioner offered to reinstate all the discharged strikers. Most of the strikers accepted the offer. At the time of reinstatement of the strikers, the unions were no longer the collective bargaining representative of petitioner's employees. Subsequent to the expiration of the collective bargaining agreement on May 19, 1977, the unions engaged in an economic strike against the petitioner and, during the strike, petitioner's employees decertified the unions in proceedings before the National Labor Relations Board.

Upon remand, the unions moved the district court to revive their counterclaim for damages. The district court entered an order on September 8, 1978, granting the

unions' motion and providing a procedure for the receipt of evidence of the damages claimed by the unions on behalf of individual strikers (Appendix, page A3). The district court referred the matter to a special master and ultimately entered judgment awarding damages to 72 of the strikers for a total amount of $443,250.36 (Appendix, page A88).

Petitioner appealed the district court's damage judgment to the United States Court of Appeals for the Sixth Circuit, which affirmed the district court in an Order dated October 22, 1981 (Appendix, page A94). Petitioner raised the first question presented herein, the issue of the unions' standing to sue for damages for its members, but the Court of Appeals did not address the issue. It is from this order of October 22, 1981 and the earlier order of May 24, 1978, that petitioner seeks a Writ of Certiorari.

JURISDICTION BELOW

The jurisdiction of the federal courts was invoked in the first instance in this matter by virtue of the Arbitration Act, United States Code, Title 9, §10, and Title 29, §185, §301 Labor Management Relations Act, by petitioner's filing of its Petition To Vacate and/or Modify the Arbitrators' Award.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW RAISES A SIGNIFICANT QUESTION THAT SHOULD BE REVIEWED BY THIS COURT CONCERNING A UNION'S STANDING TO MAINTAIN A DAMAGE ACTION FOR DISCHARGED STRIKERS.

This litigation commenced with petitioner's action in the district court, pursuant to the Arbitration Act, 9 U.S.C. §10, to vacate an arbitrator's award which ordered the reinstatement of some 90 discharged strikers without back pay. The unions counterclaimed for enforcement of the award under the Arbitration Act. The unions also counterclaimed for common-law damages for the strikers based upon the petitioner's alleged malicious and willful refusal to reinstate the strikers within the time ordered by the arbitrator.

The unions failed to appeal the district court's dismissal of the counterclaim when they appealed the decision vacating the arbitration award. The Sixth Circuit's remand of the arbitration award to the district court with instructions to reinstate the arbitration award made no reference to the counterclaim for damages. The district court, upon remand, revived the counterclaim and referred it to a special master to determine the amount of damage to each striker. The matter thereafter proceeded as a back pay hearing with no amendment to the pleadings. The district court never explained the statutory or common law basis of the action supporting the counterclaim. It is obvious that the district court treated the counterclaim as an arbitrable matter; as though the arbitrator had decided that the strikers were entitled to back pay along with reinstatement, despite the fact that the arbitrator specifically ruled

that the claim for back pay was denied (Appendix, page A80). The damage judgment in favor of the individual strikers was appealed to the Sixth Circuit, which affirmed the district court, without answering the question whether the federal courts have jurisdiction to entertain a union's damage claim for individual employees.

While the counterclaim did not allege Section 301, Labor Management Relations Act, as the jurisdictional basis for the counterclaim, it was treated by the courts below as a 301 action, as obviously, that is the only basis upon which the claim may even arguably stand.

This Court has never decided this question regarding the union's standing to maintain a 301 action for damages for its members. *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962), is frequently cited for the proposition that federal courts will entertain damage actions for individual employees under Section 301, however, that principle is distinguishable from the issue in this case. *Smith* was decided very early in the history of the substantive federal labor law, while the debate was whether Section 301 was a procedural statute granting unions access to the federal courts only to apply state contract law, or, whether Section 301 anticipated a body of federal substantive labor law. The focus in *Smith* was not yet on the substance of that federal labor law.

In *Smith* this Court was dealing with the question of the individual employees' right to bring a 301 action. Smith, the plaintiff, was an employee of the Evening News and had obtained assignments from his co-workers to represent their interests in their wage claim against the Evening News. There was no grievance procedure in the contract. The action was filed in the Michigan courts which ultimately held that the employees could not bring

the action to enforce their contractual rights because the matter was within the exclusive jurisdiction of the National Labor Relations Board. This Court's holding in *Smith* is that individual employees may bring a 301 action, in their own capacity, to enforce their contract rights.

In this case, the individual employees are not parties, they have not made an assignment of rights to the union and the union does not purport to be a class representative pursuant to Rule 23, Federal Rules of Civil Procedure. The union simply alleged a common law claim for damages upon the petitioner's failure to reinstate strikers to work within five days of the arbitrator's award. The relief requested was for compensatory and punitive damages.

The question raised by this counterclaim is whether the federal courts have jurisdiction over a union's action for common law damages for its members.

Section 301 of the Labor Management Relations Act is the only basis upon which the counterclaim can arguably stand. The first section of Section 301, in paragraph a, provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce, as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties. . . .

Then in Section 301(b):

> . . . Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. . .

It is fair to state that Section 301(a) only authorizes unions to bring suits for violations of a collective bar-

gaining agreement. The counterclaim in issue here is the petitioner's failure to reinstate employees and the remedy sought is damages for the employees. The counterclaim simply is a claim for common law damages and not a suit for violation of the collective bargaining agreement, hence, the lower courts had no jurisdiction to entertain the counterclaim.

Section 301(b) simply provides the union with the standing to bring such suits as a legal entity. This Court, in *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957), quoted the legislative history of Section 301 in stating that the purpose of Section 301 was to provide for "suits by unions as legal entities and against unions as legal entities in the Federal courts in disputes affecting commerce." 353 U.S. 454. There is nothing in Section 301, the legislative history or in this Court's prior decisions that suggest that a union has standing to maintain a common law damage action on behalf of its members against their employer.

This issue is particularly timely in view of this Court's recent decision in *Complete Auto Transit, Inc. v. Reis*, 451 U.S. 401 (1981). This Court held that an employer cannot maintain a damage action under Section 301 against individual unlawful strikers. This Court noted that Congress preferred, as the employer's remedy against unlawful strikers, the employer's right to discharge the strikers. The petitioner exercised that right and discharged the unlawful strikers. Yet, the Sixth Circuit has ruled that the union has a damage action against the petitioner on behalf of the unlawful strikers.

In *Complete Auto Transit, supra*, this Court expressly acknowledged Congress' intent that while an employer cannot sue unlawful strikers for damages, it has a right to discharge them, yet the Sixth Circuit has ruled that these employees can engage in an unlawful strike, defy a

federal court's injunction and, still, the union can maintain an action on their behalf to collect damages from the employer. This Court should grant a review of the decision below as this question presents a significant and basic issue that has never been addressed by this Court since it decided that Congress contemplated a body of substantive labor law pursuant to Section 301.

2. THE DECISION BELOW RAISES A SIGNIFICANT QUESTION THAT SHOULD BE REVIEWED BY THIS COURT CONCERNING AN EMPLOYER'S RIGHT TO DISCHARGE EMPLOYEES ENGAGED IN A STRIKE IN BREACH OF A COLLECTIVE BARGAINING AGREEMENT.

Section 301 of the Labor Management Relations Act establishes the right of employers to discharge employees engaged in unlawful strikes. In *Complete Auto Transit v. Reis*, 451 U.S. 401 (1981), this Court held that Congress in enacting Section 301 of the Labor Management Relations Act, did not intend that employees should be sued for their breach of contract, but rather that "it preferred discharge as the employer's remedy under Section 301 where employees violate the no-strike provision of their collective bargaining agreement."

In this case, the petitioner first obtained an injunction against the unlawful strike pursuant to *Boys Market, Inc. v. Retail Clerks*, 398 U.S. 235 (1970). The strikers ignored the injunction and the petitioner invoked its right to discharge the unlawful strikers.

The union filed grievances on behalf of the discharged strikers, which were ultimately presented to an arbitrator. The collective bargaining agreement specifically stated that the petitioner had the right to discharge unlawful strikers. The arbitrator acknowledged that the strike

was unlawful, yet he exercised the powers of a chancellor in equity and ordered the strikers to be reinstated because the petitioner "had unclean hands." (Appendix, page A78).

The federal district court vacated the arbitrator's award as it found that there was no basis for the award "in view of the clarity of [petitioner's] right to discharge the striking employees" (Appendix, page A17).

The Sixth Circuit reversed the district court and held: "That arbitration as a means of settling labor disputes is favored in that courts refuse to review the merits of an arbitration award, seeking to effectuate the policy that labor disputes should be resolved by arbitration. *See United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960)." (Appendix, page A3).

The decision of the Sixth Circuit below is that an arbitrator's decision is final and binding upon everyone, even the federal courts. This Court clearly never intended that result and where an arbitrator's award denies an employer the right to discharge unlawful strikers for no reason, except the arbitrator's whim, the federal courts should vacate the award. This Court commenced the fashioning of a body of federal substantive labor law with the belief that Congress intended to "promote collective bargaining that ended with agreements not to strike." *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 453 (1957). Since then, this Court has carefully balanced the interests of the parties: In the Steelworkers Trilogy[2] it required employers to arbitrate and to be bound by arbitrators' decisions;

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2. *United Steelworkers v. Enterprise Wheel & Car Corp., supra; United Steelworkers v. Warrior & Gulf Navigation Co., supra; United Steelworkers v. American Manufacturing Co., supra.*

in *Boys Market, Inc. v. Retail Clerks, supra,* this Court said that, as the quid pro quo for the unions and employees' right to arbitrate, the employer was entitled to an injunction against unlawful strikes; then the Court, in essence, granted unions, their officers and members immunity from damage actions by the employer in favor of arbitration where there were unlawful strikes. See *Atkinson v. Sinclair Refining Co.,* 370 U.S. 238 (1962); *Carbon Fuel Co. v. United Mine Workers,* 444 U.S. 212 (1979); *Complete Auto Transit v. Reis, supra.* This Court surely did not intend to discourage unlawful strikes in favor of arbitration in the first instance, and then, permit the federal courts to allow an arbitrator to reward unlawful strikers by reinstating them directly contrary to the terms of the collective bargaining agreement. That is the result of the Sixth Circuit's decision.

This Court should continue the process of balancing the interests of the parties in furtherance of the policy of discouraging unlawful strikes in favor of arbitration by reviewing this case and, hopefully, ruling that the federal courts retain jurisdiction over federal labor matters and can vacate an arbitrator's award that denies an employer's right to discharge unlawful strikers.

CONCLUSION

For the reasons stated herein, this Court should grant this Petition for a Writ of Certiorari.

Respectfully submitted,

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Appendix

APPENDIX

OPINION OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Decided and Filed May 24, 1978)

No. 76-2637
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FALLS STAMPING & WELDING COMPANY,
Plaintiff-Appellee,

v.

THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
Defendants-Appellants.

APPEAL from the United States District Court for the Eastern District of Ohio.

Before PHILLIPS, *Chief Judge,* EDWARDS and ENGEL, *Circuit Judges.*

PER CURIAM. The International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (the union) appeals from the judgment of the district court vacating the award of an arbitrator in a labor dispute. Reference is made to the decision of the district court for a recitation of pertinent facts. *Falls Stamping & Welding Co. v. U.A.W.*, 416 F. Supp. 574 (N.D. Ohio 1976).

Appellee Falls Stamping & Welding Company (the company) entered into a collective bargaining agreement with the union containing the following no-strike clause:

> The Company shall have the right to discharge or otherwise discipline any employee who does engage in a strike, slowdown, stoppage of work, or interference with Company's operation during the term of this Agreement, *any discipline or discharge as a result of the foregoing is subject to the grievance procedure.* (emphasis added).

In September 1975, approximately 93 employees were discharged following a series of wildcat strikes over the disciplining of certain employees. The union processed the grievances of the discharged employees pursuant to the collective bargaining agreement, which required arbitration. The arbitrator ordered that all of the employees should be reinstated with seniority but without backpay. Subsequently, the company filed this action under section 10 of the United States Arbitration Act of 1947, 9 U.S.C. § 10, to vacate or modify the award on the ground that the arbitrator had exceeded his authority by granting relief in contravention of the express terms of the collective bargaining agreement.

The district court vacated the order of the arbitrator, primarily on the authority of *Amanda Bent Bolt Co. v. U.A.W.*, 451 F.2d 1277 (6th Cir. 1971), finding that the award of the arbitrator was contrary to the express language of the contract. We conclude that *Amanda* is not controlling in the present case and reverse.

In *Amanda*, this court held that when an employer reserves the unequivocal right to discharge employees who violate the no-strike provision of a collective bargaining

agreement, an arbitrator has no authority to order reinstatement. In the present case, however, the company expressly agreed that the discharge of employees for participating in a strike would be subject to the grievance procedure set forth in the contract. This procedure included arbitration.

In *Amanda*, we recognized the following general rule:

> [T]hat arbitration as a means of settling labor disputes is favored and that courts refuse to review the merits of an arbitration award, seeking to effectuate the policy that labor disputes should be resolved by arbitration. *See* United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed. 2d 1424; United Steelworkers v. Warrior & Gulf Nav. Co., 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409; United Steelworkers v. American Mfg. Co., 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403; United Steelworkers v. Caster Mold & Machine Co., 345 F.2d 429 (6th Cir.). 451 F.2d at 1278.

We conclude that the cases cited in the foregoing quotation and the opinion of this court in *Timken Co. v. Local 1123, United Steelworkers*, 492 F.2d 1178 (6th Cir. 1974), require reversal. Accordingly, the judgment of the district court is reversed and the case is remanded with instructions to reinstate the award of the arbitrator.

JUDGMENT ENTRY OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Filed May 24, 1978)

No. 76-2637

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FALLS STAMPING & WELDING COMPANY,
Plaintiff-Appellee,

v.

THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
Defendants-Appellants.

Before: PHILLIPS, *Chief Judge*, EDWARDS and ENGEL, *Circuit Judges.*

JUDGMENT

APPEAL from the United States District Court for the Northern District of Ohio,

THIS CAUSE came on to be heard on the record from the United States District Court for the Northern District of Ohio and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and the cause remanded with instructions.

It is further ordered that Defendants-Appellants recover from Plaintiff-Appellee the costs on appeal, as itemized below, and that execution therefor issue out of said District Court if necessary.

ENTERED BY ORDER OF THE
COURT.

/s/ JOHN P. HEHMAN
Clerk

JUDGMENT ENTRY OF THE UNITED STATES DISTRICT COURT

(Filed July 6, 1976)

Civil Action File No. C 76-170 A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

FALLS STAMPING & WELDING COMPANY,

vs.

THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *et al.*

JUDGMENT

This action came on for trial (hearing) before the Court, Honorable Leroy J. Contie, Jr., United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the arbitration decision of George Hayes entered on May 28, 1976 is hereby vacated. The parties are hereby ordered to resubmit to said arbitrator the issues raised by the grievances of employees F. Koslik and D. Dale. Judgment is hereby granted to plaintiff and against defendants on the remaining issues presented by its complaint. Judgment is also hereby rendered for plaintiff and against defendants on the latters' counterclaims. Each party shall bear its own costs.

/s/ LEROY J. CONTIE, JR.
U. S. District Judge

MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT

(Filed July 6, 1976)

Civil Action C 76-170 A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FALLS STAMPING & WELDING COMPANY,
Plaintiff,

v.

THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *et al.*,
Defendants.

MEMORANDUM OPINION AND ORDER

Falls Stamping & Welding Company (hereinafter plaintiff) initiated this action on June 7, 1976 under Section 10 of the United States Arbitration Act of 1947, 9 U.S.C. §10, to vacate and/or modify an arbitrator's award. Defendants have answered by denying the material allegations and counterclaiming for enforcement of the award and for compensatory and punitive damages for the allegedly malicious delay in execution.

On the same date this action was filed, the Court granted plaintiff's motion for a temporary restraining

order staying the effect of said award. After hearing, the Court issued a preliminary injunction on June 14, 1976, which further stayed the award. The final hearing in this action was conducted on June 22, 1976. The following shall constitute the Court's findings of fact and conclusions of law.

The facts necessary to this decision are undisputed. In response to plaintiff's decision to discipline four press operators for allegedly cheating in piecemeal work at the plant, certain members of defendants' Local Union No. 1194, United Automobile, Aircraft & Agricultural Implement Workers of America (hereinafter Local) went on strike on August 28, 1975. After negotiations culminating in plaintiff's agreement to further investigate the charges of cheating, the employees returned to work on September 2, 1975. No disciplinary action was taken by plaintiff against the striking employees, although the collective bargaining agreement contained a "no-strike" clause.

After further investigation, plaintiff resolved to discharge two of the employees charged with cheating, and to suspend the two female employees involved for twenty days. Upon learning of this action, the employees on the second shift went on strike on September 9, 1975. These employees were discharged on September 10, 1975. The strike spread to plaintiff's first shift on September 10, 1975.

On September 11, 1975, this Court granted a temporary restraining order enjoining the strike. The striking employees failed to return to work. On September 13, 1975, plaintiff wrote to the day shift employees and informed them that if they did not return to work by September 16, 1975, they would be discharged. None of these

employees appeared for work on September 16, 1975, and were accordingly discharged on that date. Thereafter, a number of the striking employees applied for re-employment, apparently pursuant to a disputed agreement between the parties. Only fifteen (15) of the approximately one hundred and twelve (112) employees involved were rehired; none of these employees were granted retroactive seniority.

Thereafter, grievances were filed pursuant to the provisions of the collective bargaining agreement. Said agreement provides a multiple step procedure culminating in arbitration. After the initial steps of the grievance procedure failed to adequately resolve the controversy, the matter was referred to an arbitrator on four representative grievances. The arbitrator heard testimony and received exhibits for nine days and, on May 28, 1976, rendered a sixty-nine (69) page decision and award. The award ordered reinstatement with seniority but without back pay of "all discharged employees of August 28 and September 16, 1975" except the two employees on suspension for cheating at the time of the September 9 and 10, 1975 strike. The two female employees were ordered reinstated with seniority and back pay from October 1, 1975. By letter dated June 11, 1976, the arbitrator corrected the reference to August 28, 1975 to read September 10, 1975. The error was apparently clerical in nature, as there were no employees discharged as a result of the August 28, 1975 strike. If this award is implemented, as many as ninety-three (93) of plaintiff's present employees must be discharged.

The subject grievances clearly fall within the scope of the parties' definition of matters subject to the grievance procedure. Similarly, it appears that, with two possible

exceptions, all grievances were procedurally perfected.[1] The pivotal provisions of the collective bargaining agreement are those dealing with the powers of an arbitrator and the no-strike covenant.

Section 24 of the contract defines the arbitrator's powers as follows:

> "The arbitrator's powers shall be limited to the application and interpretation of this Agreement as written. He shall at all times be governed wholly by the terms of this Agreement and he shall have no power or authority to amend, alter or modify this Agreement in any respect nor shall he consider any statute or laws not specifically incorporated herein. Any award of the arbitrator shall not be retroactive prior to the time that the grievance was first submitted in writing. The arbitrator's decision shall be final and binding upon the Union, Company, and employees. The expenses of the arbitrator shall be shared equally by the Company and the Union."

The no-strike provision is contained in Section 25 which reads, in pertinent part, as follows:

> "During the term of this Agreement, the Union, its officers and stewards shall not instigate, promote, sponsor, or engage in a strike, slowdown, stoppage of work, or any other interruption of production. In the event any employee or group of employees covered by this

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1. The grievances filed by the Local on the behalf of eighteen employees but without their individual signatures are defective, the plaintiff argues, for failure to follow the assertedly mandatory provisions of Section 19 of the collective bargaining agreement. Said section requires that grievances "shall be signed by the employees involved." The arbitrator ruled against plaintiff on this issue. Further, the arbitrator left unanswered the question of whether the two female employees suspended for cheating had perfected their grievances.

> Agreement participate in a strike, slowdown, stoppage or work, or any other interruption of production, the Union shall immediately, upon being notified by the Company, instruct any such employee or group of employees to resume work immediately. The Company shall have the right to discharge or otherwise discipline any employee who does engage in a strike, slowdown, stoppage of work, or interference with Company's operation during the term of this Agreement any discipline or discharge as a result of the foregoing is subject to the grievance procedure."

Although plaintiff advances a number of the grounds contained in Section 10 of the United States Arbitration Act of 1947, 9 U.S.C. §10, the Court concludes that subparagraph (d) of said section is dispositive of this action. Said subparagraph provides that an award may be vacated where the arbitrators "exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made."

As stated by the Supreme Court in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599, 80 S.Ct. 1358, 1362 (1960):[2]

> "It is the arbitrator's construction that was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his."

Nevertheless, the Supreme Court also said in that opinion:

> "[A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he

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2. *Enterprise* was the third case of the famous Steelworkers trilogy. See also *United Steelworkers v. American Mfg.*, 363 U.S. 564, 80 S.Ct. 1343 (1960); *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 80 S.Ct. 1347 (1960).

> does not sit to dispense his own brand of industrial justice . . . [H]is award is legitimate only so long as it *draws its essence* from this collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." 363 U.S. at 597, 80 S.Ct. at 1361. [Emphasis supplied].

This "essence" concept has been consistently applied by the lower federal courts. See e.g. *Timken Co. v. Local Union No. 1123, United Steelworkers of Am.*, 482 F.2d 1012 (6th Cir. 1973); *Amanda Bent Bolt Co. v. International U. U.A.A., A.I.W.*, 451 F.2d 1277 (6th Cir. 1971); *Diamond v. Terminal Railway Alabama State Docks*, 421 F.2d 228 (5th Cir. 1970); *Masters S.M.W. & C. R. Ass'n. of R. I. Inc. v. Local Union No. 17*, 397 F.Supp. 1372 (1975); *Amerada Hess Corp. v. Local 22026 Fed. Lab. Union, AFL-CIO*, 385 F.Supp. 279 (1974).

Plaintiff argues that the arbitrator exceeded his authority by entering an award which is contrary to the express language of Section 25 of the contract granting it the right to discharge striking employees. The Court agrees.

In *Amanda Bent Bolt Co. v. International U., U.A.A., A.I.W., supra*, the Sixth Circuit dealt with a very similar situation. In that case, the arbitrator determined that employees striking in violation of a no-strike provision in the collective bargaining agreement should be reinstated with back pay. The court held that as said award was directly contrary to express language of the contract allowing the company to discharge striking employees, the arbitrator had exceeded his authority under the contract.

Defendants argue that *Amanda Bent Bolt* is not determinative of this action. Specifically, they contend that that case is distinguishable because Section 25 of the in-

stant contract expressly provides that any discipline effected by plaintiff for violations of the no-strike clause is subject to arbitration, whereas the *Amanda Bent Bolt* contract did not have such a clause. This argument is specious for while the inclusion of said provision is relevant to a determination of the arbitrability of the issue, it in no way expands the authority of the arbitrator delineated in Section 24 of the collective bargaining agreement. The simple fact remains that, unless findings of the arbitrator demonstrate cogent grounds for disregarding the express terms of the contract, *Amanda Bent Bolt* requires the vacation of this award.

Identification of the grounds for the arbitrator's decision has not been an easy task, as said decision is repetitive, loquacious, and imprecise. The greatest part thereof consists of summaries of the evidence and of the parties' respective positions. There are practically no findings and very little discussion. However, close scrutiny reveals that the arbitrator's rationale is predicated upon his conclusion that plaintiff had "unclean hands." The arbitrator stated:

> "While the decision on four (4) Press Operators precipitated the walkouts the employees contended many Company improper actions and weaknesses of the Union Officers to cope with contract violations were underlying factors. The second walkout lasted five working days during which period all who testified and participated in the unauthorized strike steadfastly maintained they could not return to work, albeit Court order and Union exhortations to do so were known, due to threats of bodily harm. This defense is understandable due to the plant being highly integrated with ex-felons among them. To name those doing the threatening, if known, could have brough

(sic) on retaliatory measures. About one sixth of the work force walked out, however, the evidence is they were at the plant before 6:30 a.m. the next day and 'persuaded' the day shift to join them. The Arbitrator recognizes the 'threats' as occurring after the fact, the walk out.

"The Arbitrator concludes and finds the Company did not have clean hands. It permitted violations of the contract to continue by Supervisors long after it was apprised of them. One of the principal antagonists toward employees in contract violations was an ex-convict Foreman who operated an after hours bar. The Company steadfastly supported his brazen acts in thwarting attempts by employees to utilize the grievance procedure. The futility of the grievance procedure was manifest when Foreman Stallworth threatened transfer and discharge if any filed a grievance. His actions made a mockery of the grievance procedure. The evidence established that he was the prime Union 'baiter' among Supervisors.

"The intimidation by Supervision in effectively thwarting the employees' use of established contractual procedures caused complete frustration to the point that employees took matters into their own hands. While this Arbitrator does not condone self-help by these employees, even though they had reason to vent their feelings, the penalty of discharge was inappropriate."

If the arbitrator was referring to the clean hands maxim of courts of equity, such reference is inapposite. Said maxim is applicable only to those seeking the intervention of a court of equity; it is a principle of inaction, and it is applied "no matter how improper may have been defendant's behavior." 30 C.JS. *Equity*, §93, p.101-

1011 (footnote omitted). Here it is the union which was seeking the affirmative action. The clean hands maxim is not applicable.

If the arbitrator's reference to unclean hands was predicated upon his personal sense of industrial justice, it is equally irrelevant. While that may be a consideration in some arbitration proceedings, it cannot take precedence over the express and explicit terms of the contract. *Amanda Bent Bolt Co. v. International U., U.A., A.A.I.W., supra.*

The only remaining explanation could be derived from the arbitrator's oblique reference, made in summary of the Local's position early in the decision, to *Mastro Plastics Corp. v. National Labor Relations Board,* 350 U.S. 270, 76 S.Ct. 349 (1956). In *Mastro Plastics,* the Supreme Court held, insofar as relevant herein, that the subject no-strike clause did not waive a union's right to strike solely in protest of an employer's unfair labor practice in attempting to coerce its employees to abandon their certified bargaining agent for another. Apparently the arbitrator concluded that plaintiff's conduct prior to the strike, and specifically the conduct of the "ex-convict Foreman," was the functional equivalent to the unfair labor practice found to exist in *Mastro Plastics.*[3]

Such a rationale misconstrues the extent of the arbitrator's authority under the collective bargaining agreement. As quoted above, Section 24 of said agreement provides that the arbitrator's powers were limited to application and interpretation of the Agreement "as written."

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3. Yet the arbitrator effected a type of compromise when he upheld the grievances. He ordered reinstatements without back pay for all employees except the two female press operators, whereas full relief would have necessitated a back pay award for all employees.

It is further stated that he shall not alter or amend the contract, nor shall he consider any statutes or laws which were not specifically incorporated into the agreement. The clause in Section 25 of the Agreement permitting plaintiff to discharge employees striking in violation of that section is clear and express. The arbitrator's "unclean hands" rationale implicitly recognizes this; yet by reference to concepts not contained in the contract the arbitrator rendered this clause ineffective. Implementation of this rationale through the award constitutes an abuse of the arbitrator's authority.[4]

As additional and alternative grounds for this holding, the Court concludes that even assuming arguendo that the arbitrator's authority did extend to consideration of the *Mastro Plastics* case in direct contravention of the contract's provisions, the holding of that case is applicable in this factual situation. The Supreme Court reasoned in that case that the collective bargaining agreement involved therein dealt solely with "the economic relationship" between the employer and the employees. 350 U.S. at 281, 76 S.Ct. at 357. Such a contract assumes that there is a lawfully designated bargaining agent. Thus, when the companies involved in that case attempted to coerce their employees into accepting a different, more "acceptable" bargaining agent, significant effects beyond the economic relationship of the employer-employee were created. These effects were, the Supreme Court concluded, beyond the scope of the agreement and its no-strike clause. Therefore, since that strike was "solely" in protest of the unfair labor practice, there was no waiver of the employees' right to strike. 350 U.S. at 284, 76 S.Ct. at 358.

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4. The appropriate means for rectifying any claimed unfair labor practice was through the National Labor Relations Board. While a complaint was filed, it was later withdrawn with National Labor Relations Board's approval.

In this case, however, the strike was, as recognized by the arbitrator, precipitated by the plaintiff's decision to discipline four employees. This clearly relates to the economic relationship between employer and employee. Therefore *Mastro Plastics* is not controlling.

The only remaining issue which merits discussion concerns the two female press operators suspended by plaintiff for allegedly cheating. Apparently the arbitrator concluded that these employees were on suspension at the time of the strike, and therefore that they were not strikers subject to discharge. The arbitrator stated that:

> "Provided they grieved their discharge and do so file it timely, the Arbitrator orders [them] reinstated with seniority and back pay . . ."

No finding as to the procedural integrity of said employees' charges was ever made; nor does the record reflect any stipulations on this issue. Clearly such incomplete findings do not constitute a "mutual, final, and definite award." 9 U.S.C. §10(d).

In view of this decision, and for the reasons stated above, the Court concludes that defendants' counterclaims are meritless.

Accordingly, the arbitrator's award shall be vacated. In view of the clarity of plaintiff's right to discharge the striking employees, the Court concludes that further arbitration of this issue is unnecessary. Therefore, judgment shall be granted to plaintiff on this issue. However, the parties shall be ordered to submit to the arbitrator the issue of the sufficiency of the grievances filed by the two female press operators.

IT IS SO ORDERED.

/s/ LEROY J. CONTIE, JR.
U. S. District Judge

ARBITRATOR'S AWARD

(Dated May 28, 1976)

IN THE MATTER OF THE ARBITRATION BETWEEN

THE FALLS STAMPING AND WELDING COMPANY

and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL UNION NO. 1194

Grievances: Re:

Discharges (112) Loss of Security (15)

Appearances:

For the Company

H.E. Rabe - Counsel
D.H. Shaffer Counsel
J.C. Herndon - Counsel and Secretary
E. Lange - President

For the Union

R. Shetterly - Rep.
W. Casstevens - Reg. Dir.
J. Yates - Int. Rep.
J. Troster - Int. Rep.
J. Simone - Int. Rep.
T. Heffernan - Local President

Hayes, Arbitrator: The above dispute was heard over a nine day period, October 31, 1975 to January 7, 1976 by George F. Hayes, following mutual selection. The parties filed post-hearing briefs March 31, 1976.

THE ISSUE

The parties stipulate four (4) representative grievances were sufficient for the record concerning one hundred twelve (112) discharges and fifteen (15) of the one hundred twelve (112) who were re-hired with loss of seniority. Of the total number of discharges, eighty eight (88) were on the day shift and twenty-four (24) were on the night shift, the former discharged September 16, 1975 and the latter September 10, 1975.

The four grievances read:

No. CL - 4887 9/12/75
Policy Grievance for Gregg Palmer 1706
John Latchaw 1576
Steve Henderson 1651
William Marks 1673

Press Operators

These employees were fired unjustly. The Company has brought charges of participating in an unauthorized strike upon this employee. Adjustment

To have these employees brought back to their jobs with full seniority and made whole.

Aggrieved Signature
Thomas E. Heffernan, President Local 1194 UAW

Company Signature
Llewelyn C. Simmons

Grievance denied - illegal strike 9/17/75
C. Trego James Gish

No. CL - 4861 9/13/75
Casper Phillips

(same as CL - 4887)

signed by
Casper E. Phillips
Company
Llewelyn C. Simmons

No. CL - 4839 9/19/75
Dave Marsh

(same as CL - 4887)

signed by
David Marsh
Company
Donald L. Shawman

No. CL - 4815 9/22/75
Local #1194 UAW for Charles Miller

(same as CL - 4487)

signed by
Thomas E. Heffernan for Charles Miller
Company
Paul Boxler

STATEMENT OF THE CASE

Four (4) Press Operators who worked the second shift were charged with cheating on the piece work count August 20, 1975. On August 26, 1975, the four operators were suspended. August 28th a Union Steward on the second shift was notified the four employees would be terminated. Shortly thereafter, the second shift of some twenty four (24) walked off their jobs. The first shift joined the others in the wildcat strike the following day.

The parties met with the Company agreeing to return the four employees to their jobs with back pay pending an investigation of the press dispute. All employees were

given the opportunity to work the Friday second shift to qualify for Labor Day Holiday pay. None accepted. The investigation was to be made by Company Counsel and Secretary James Herndon. The employees returned to work Tuesday, September 2, 1975.

The results of Mr. Herndon's investigation were made known to the Union Tuesday, September 9. The four employees were found guilty as charged by Herndon, with two men to be discharged and the two women to be suspended for twenty days. The two men were told of their discharge about 5:15 p.m. and a half hour later the second walkout of the second shift began; they were told if they didn't return by 7:30 p.m. they would be terminated; joined the following morning by the day shift of some eighty eight employees.

The Company went to Federal Court for an injunction against the unauthorized strike. Thursday, September 11, Judge Contie granted the relief requested and instructed Local President Tom Heffernan to use TV and radio to get the striking employees back to work. They refused to return to their jobs. During the strike period some employees, including probation, remained on their jobs. None of the Union officials reported for work, contending they were threatened.

The second shift had been terminated at 7:30 p.m. September 9th and officially notified September 10th.

Under date of September 13th, the Company wrote the day shift to report for work by Tuesday, September 16th or they were terminated. They failed to report as told, however, on the afternoon of the next day possibly all reported to the Company for work approval effective the next morning, stating the Union told them they would get

their jobs back and seniority. Only fifteen have been rehired to date.

The usual complement of one hundred fifty (150) has been reduced to one hundred fifteen (115), due in part to loss of the Rockwell business. It had earlier removed its dies from the plant.

The Union contends the Company violated the contract under the Clean Hands Doctrine, whereas the Company charges the Union with violating the no-strike clause by engaging in two wildcat strikes.

THE COMPANY OPENING STATEMENT

The Company position is the Union now seeks advantage of the contract arbitration process under a contract it repudiated.

In spite of Judge Contie ordering all striking employees to return to work, which order was made September 11th, none returned. The Company wrote all to return no later than September 16th or be terminated. They failed to heed this order and were terminated.

The Company maintains it lost over $700,000.00 in sales and one customer has been lost to a competitor. The specific and consequential damages exceed $28,000.00 and Police protection cost was $11,000.00.

Further contention is the Union Officers did nothing to end the strike, nor did the International which merely told employees their action was illegal and unauthorized. It did nothing to penalize the Local by lifting its charter, to police the trusteeship, to levy fines upon members to honor the contract they signed. It says windows were broken and tires slashed during the strike.

Counsel mentioned this is a complex case. The Arbitrator agrees, after hearing the evidence and listening to some twenty five (25) witnesses, and receiving almost fifty (50) exhibits. The transcript consists of some eighteen hundred thirty five (1835) pages.

The prima facie case presented by the Company at the outset is mainly contained in the Arbitrators Statement of the Case.

In addition, some pertinent points covered by the Company include allegations that eighteen (18) of the one hundred twelve (112) grievances are improper for failure of the grievant to sign the same. The Union had signed for the employee.

THE UNION OPENING STATEMENT AND POSITION

The Union contends regarding the eighteen (18) grievances filed by the Union for the employees that the right of agency extends to the Union, that the contract contains no forfeiture clause.

The Union says the Company conduct deliberately and directly was the cause of the walkouts that led to the discharges. Further, the Company is not coming into arbitration with clean hands.

In May, 1974 the Company agreed to a wage adjustment for skilled employees but reneged on the agreement. That at vacation time the Company came up with a new interpretation to deny vacation pay in spite of practice to the contrary and no language change in the contract. Another change involved Holiday pay in that employees would have to work the complete day before and after the Holiday.

On November 14, 1974 an employee was discharged for running scrap parts on incentive rate; on January 13, 1975, another was discharged for an equally discriminating reason. After proceeding through the grievance procedure, and relying on it, the Company sought to break it down by demanding the Arbitrators first rule on arbitratability.

After this, the treatment of employees by Foremen, Plant Superintendent and Company President brought on a complete breakdown in faith in the Union's ability to protect the membership's rights.

The Foremen threatened to fire employees if one attempted to file a grievance, used abusive, profane and suggestive language to employees as well as assaulting and threatening to assault employees.

Charged also is the Company changing of rates, thereby increasing production and decreasing pay with no change in the job.

The Plant Superintendent calls employees liars and has told them "file all the grievances you want, will deny them, and if you quote me, I'll deny it."

The Union admits the fear employees had while outside the plant, after receiving threats, must be genuine fear and not a cop out.

As for the Company investigation of charges against the four Press Operators, there was lack of due process for not one of the four was asked for an explanation of his or her actions.

After the strike, the Company promised to re-hire a vast majority of the discharged employees and negotiate seniority but to date has re-hired sixteen (16) without seniority and at a lesser rate of pay than received before the strike.

John Yates, International Representative, related in June, 1975, he began servicing the Local; that some twenty (20) grievances were discussed with the Company making a proposal on four more serious ones, two discharges, Holiday pay and vacations. A money settlement was offered for the two discharged employees; on Holidays one would have to work four or six hours in qualifying days; and on vacations due in '75, the Company would pay accumulated vacation pay, however, the second and third year it would no longer pay a pro-rata vacation. The offer was rejected. He described details of the August 28 and August 29 strike in which he sought to get the employees back to work. The employees were dissatisfied with the Company offer to settle the four grievances, and complained of their treatment by Foreman Stallworth who threatened and intimidated them; transfers to various jobs, safety and problems writing grievances. As to the four grievances referred to, the Company objected to one Arbitrator hearing them. It insisted on separate hearings for each of the four.

The August 29th settlement was approved, concerning Herndon's investigation of the four Press Operator's alleged cheating; return to work and back pay for the four who had been suspended on August 26. The settlement was reached after the Officers and Committee met with the Company on the 29th. Yates had been there all night and most of the 29th. The employees were still disgruntled and pessimistic on Herndon's investigation. None returned to work the 29th to qualify for Holiday pay. The Company then gave out paychecks.

On Friday, September 5th, Herndon told Yates the result of his investigation, that the four Press Operators were guilty. The Committee met with the Company

Tuesday, September 9th and told two would be discharged, and two females suspended twenty (20) days.

About 5:30 p.m. the second walk-out took place. Between 10:00 p.m. and 11:30 p.m. Yates stopped at the plant but saw no picketing, only a few persons in automobiles, after which he went home.

The following morning he attempted to meet with the Company which refused to meet officially until the employees returned to work. The Company had Policemen around the plant but, although one would be protected in entering the plant there were fears expressed by those who wanted to work that because of threats one was not assured of getting home.

Yates told of the restraining order issued by the Federal Court ordering strikers to return which was read to the members on September 11th. He phoned Herndon for a meeting with Warren Davis, Assistant Regional Director which was held the morning of September 16th. Robert Phillips, Union Counsel was present as was Attorney David Shaffer along with Herndon.

All had been discharged as of this meeting, day and night shifts. The Union sought to get their jobs back because of the long service record of many employees. The Company indicated it had no quarrel with the overwhelming majority of employees, stating applications for employment would have to be completed. According to Yates the figure of 90 to 95 percent of a total employment of one hundred fifty (150) was mentioned by Herndon regarding those to be re-hired of the total discharged. Nothing was reduced to writing. The Company would re-evaluate applicants on the basis of the job he was doing, his performance, attitude and attendance, all within 24 hours. Employees were told at a 2:00 p.m. meeting that day the

outline of the Company proposal after which they proceeded to the plant to apply for jobs. Trego and Lange were apparently unaware of the agreement reached with Herndon. The proposed outline regarding reemployment was later received and posted by Lange which notice indicated it was an agreement with the Union, denied by Yates.

On Friday, Yates was at the plant to see what happened to the applications. He asked Lange how many he had covered, receiving a reply, "I haven't covered anybody, those applications are all put on the bottom, we are still taking applications, we have hundreds of applicants out there before we consider those who worked here before, prior to discharge". He called Herndon who came to the plant and told Lange to consider discharged persons for re-hire. On the 23rd or 24th of September, the Union was told sixteen (16) would be re-hired, a long way from 90-95%; that the loss of the Rockwell account reduced the total from 150 to 115 employees. Yates said a meeting was held shortly after in which some grievances were settled. Yates claims thirty (30) outsiders have been hired since September 24th. Denied was a statement charged to him telling the Company "I can't do anything with them, go ahead and fire them."

Yates admitted Herndon told him two affidavits concerning the cheating on the press were available to him but he told Herndon "I didn't want to know who the witnesses are" because of the strikers who wanted to know the witnesses names. As to the Company's offer to furnish press cycle information to the Union upon written request Yates admitted the offer was made but he has not written the letter.

Yates admitted at the September 16th meeting Warren Davis stated the Union would help to get lost business back

at the plant. The Company was attempting to bring out the fact Herndon had mentioned there would not be a need for the former complement of 150 employees, however, Yates said this was at a later time; that the Company did mention protecting probationers and those hired during the strike. Referring to an offer of settlement of the two discharged Press operators concerning a polygraph test if the two refused it, the Union would drop their cases, Yates said the offer was refused.

W. Casstevens, Regional Director, testified concerning two meetings in June, 1975 regarding four grievances, two of which were discharges, one in vacation pay, and the fourth, Holiday pay. He recalled discussing one of the discharges over running scrap parts. As to vacation pay a precedent of 20 years had been established wherein hours compensated were computed as hours worked in arriving at vacation pay. The Company sought a change although the language remained the same over the years. The scrap parts discharge case version was given the Company after which Herndon said it was not the story he was given. Herndon never replied to the Union. The letter of settlement offer sent the Union as to Holiday pay was an offer worse than the one made at the meeting in which the Company stated if one was excused during a qualifying day, he would be paid. This was changed in a Company letter stating payment would be made if the employee worked six hours. For one of the discharged employees, the Company offered to pay one-half earnings and maintain the termination. The vacation pay offer was for payment as before for 1975 but the following two years payment would not be made for compensated hours but hours worked.

In the matter of the Union Committee charge the contract did not contain all that the parties agreed upon

Casstevens stated he instructed the Local Committee to prepare a list of omitted or incorrect contract provisions to the Company for review. He did not know if the Committee submitted the list to the Company.

J. Simone, International Representative, stated he was the Union servicing representative to the plant from 1967 to June, 1975, stated that following a strike in 1967 relations were strained, partly due to a Superintendent who was charged with doing unit work as well as other things, and who was subsequently terminated. Relations improved until O'Leary joined the Company. Shortly after this, a second shift stoppage occurred when O'Leary entered the plant under the influence of intoxicants, started to intimidate and coerce employees, using off-color language. Following a conversation with Simone the next day, O'Leary apologized to the entire second shift of twenty two (22) employees.

In February, 1974 O'Leary phoned Simone requesting a meeting with the Committee. He wanted early negotiations toward a new contract by May 1, 1974, although the contract did not expire until July 11, 1974. Proposals were exchanged in March or April. Rabe attended some sessions with Carol Trego attending all negotiation meetings. Items not negotiated that were in the present contract were to be continued in force. Vacation benefits change was proposed but the Company refused.

A skilled trades program was proposed by the Company which Simone pointed out would only mean training one who would leave for higher wages. The Union proposes raising wages for the skilled employees as a means of keeping them at the plant.

The skilled trades group was the only group not enjoying a performance bonus. The Union proposed inclusion of

maintenance workers with the skilled traders stating A classification Tool and Die Maintenance personnel would receive the same increase.

Simone claims the Company then offered fifty cents an hour increase. During a recess the Committee raised the question of getting contract approval if the skilled trades received fifty cents an hour increase. It was agreed to hold off the fifty cents until after contract ratification.

Simone stated O'Leary drafted a letter, the contents of which was to the effect not later than September 1, 1974, the Company would meet with the Committee and negotiate on additional rate for the skilled trades. Simone returned from vacation September 9th, talked with Local President Heffernan, prior to the meeting scheduled with the Company that day, informing Simone he sought a meeting with O'Leary two or three times but to no avail. The parties met with O'Leary going into tantrums claiming the Committee hit him over the head for the agreement; that he was in no position to grant the fifty cents; that if given to November 1, 1974 "maybe it wouldn't be fifty cents but a dollar."

The Committee replied he had from ratification date May 20 to September 1st to get this into motion. He called the Committee "a bunch of dummies" and walked out.

Simone phoned Rabe about the outcome of the meeting, that Rabe said he had attended the meeting in which "O'Leary had made the offer which was deferred to a later date."

He attended two or three grievance meetings in which O'Connor, the new Superintendent was present. The meetings were unproductive, lasting ten or fifteen minutes. After compromising some cases to no avail, a meeting broke up. Simone was talking with Hefferman when O'Connor

ordered him out of the plant as did Foreman Sears but did not before Simone used a few choice words. Trego wrote later asking Simone to apologize. Trego read into the record a letter from the Company dated May 24, 1974, as follows:

"Subject skilled classifications. As a result of our recent contract negotiations, the Company would like to confirm intention to establish an ingoing problem where job descriptions with appropriate wage adjustments will be made.

It is further understood that the Company, through the office of the President, will work with members in the skilled classification to bring about a fair and equitable result with regard to a time limit in our joint belief that this program will be put into effect between now and November 1, 1974." (later Simone claims it was amended to read September 1, 1974) It was signed by D.A. O'Leary, President.

Regarding his conversation with Rabe concerning the fifty cents and O'Leary denying it when he had tantrums during a meeting Simone said Rabe never did check out the offer.

Things were in an uproar at the plant as reported by Heffernan, so Simone contacted Rabe telling of the dissatisfaction over vacations and the Company's attempt to discount Holidays paid etc. as compensable hours in complying vacations. Rabe replied if it wasn't in the agreement, the employees were not entitled to it. Simone replied if one had a five weeks vacation that time would be deducted the next year in computing one's vacation; that the Company had never done this in the past with no problems of interpretation. Simone met with Rabe, Herndon, and a company Director, Booth, a banker, ad-

vising them of the labor problems with O'Leary and four grievances involving discharges (two), Holiday Pay, and vacations. The gentlemen agreed to review matters and as to the four grievances did not promise anything. A few weeks later, O'Leary, O'Connor and a few others were terminated.

Later the parties met to resolve outstanding grievances with four or five disposed of one way or another. The four earlier mentioned were not resolved. Next a meeting was held with Casstevens present in which no progress was made. The Company objected to multiple grievances before one arbitrator with the dispute settled in arbitration.

On cross-examination, Simone admitted O'Leary talked of paying fifty cents per hour to class A Tool and Die men, and any in an apprentice category would not get it. The Union wanted maintenance men included especially, Derita, First Class Repairman with O'Leary consenting to include Derita. Two negotiating learn members were Tool and Die men complicating the fifty cents per hour increase for them insofar as ratification was necessary from the production employees as well, as maintenance personnel. The O'Leary letter of May 24, 1974 was offered in evidence.

The Union filed a charge with the Labor Board reference the fifty cents skilled trades offer which charge was dismissed. As for the meeting with Rabe, Herndon and Booth, it was admitted Rabe arranged the meeting.

After O'Leary left the Company, Rabe and Herndon met with Simone and the Committee, mentioning they were not acting responsibly in processing grievances without merit. Rabe met on three consecutive days to resolve some grievances of which several were disposed including a discharge case in which the Company reinstated the em-

ployee with back pay. Fifteen or so cases remained after the grievance meetings.

Simone identified Company Exhibit 39, a letter to him from the Company, signed by O'Leary, dated October 7, 1974, requesting a meeting relative to establishment of a Tool & Die Apprenticeship Program.

The vacation problem concerned vacations not being counted as hours worked. Simone said for twenty years vacations had been computed as time worked.

T. Heffernan, Local President, reiterated much of what Yates testified concerning the two walk outs; also that as per Judge Contie's order he went on radio urging employees to return to work. He was on vacation the first walk out with G. Rice, acting President, until his return September 2, 1974, however, he did appear at the plant and was in the August 29th meeting with the Company. A regular Union meeting was scheduled Saturday, September 13th. He also told of the employed being fed up with the grievance procedure, Union officers and the Company treatment of them; that grievances would get "lost" with the Company. He did not work because of indirect threats; nor did he return after receipt of the Company letter of September 13th ordering return to work by the 16th or be terminated. On September 15th in a conversation with Carol Trego she asked if he was coming into work on the 16th with Tom answering, "We'll wait and see." After Herndon investigated the cheating charge, and the result given the Union September 9th some employees who walked out wanted the names of the two Company witnesses to the cheating which was refused; and if given the names of the walk out would end. He charged the present contract is not the same as the galley proof shown the Union.

Space will not permit reciting all the testimony of witnesses, consequently the Arbitrator will cite highlights. The testimony of witnesses will follow the order of appearances on the stand.

A. A long service employee and Committeeman mentioned September 9th he tried to get the employees back to work, with some starting to go in when a big tall dude said "You better not, or will break your neck"; that he received a threatening call at 10:00 p.m. stating his "guts would be slit open" if he tried to lead them back to work and this from a black man (from his voice). He was later offered a Supervisors job by Superintendent Gish at Gish's home. He answered "would think it over". He understood 90-95% would be re-hired with seniority to be discussed later.

B. The next witnesses, an alternate Committeeman, stated second shift Foreman, A. Stallworth told him "if you write that grievance, I will fire you". In the case of discharged employees he couldn't write a grievance in the plant but had to do the writing at home. An altercation with Foreman Sears who told him to "get the hell out" of Trego's office.

He admitted the Steward had been given paid time during working hours to write-up the same grievance he was not allowed to write. He felt as a Union officer he was one of the reasons the employees went out. O'Leary had given him a loan of seven hundred dollars ($700.00) when his house caught on fire.

C. A female employee, second shift, stated she had been propositioned in the plant by Foreman A. Stallworth; that he also refused to let her go home when ill, for which she was hospitalized, terminating her while absent. She was later reinstated, but without back pay, a penalty for

not reporting off. When on a Press that was giving her shocks the same Foreman refused to take her off. She charged Foreman Stallworth with kidnapping her as she sat in her automobile, driving off and molesting her before they returned to where she was to meet another employee. After walking out on September 9th and refusing to return she was discharged September 10th.

She admitted she did not complain to Management about the problems with Stallworth for if she grieved she wouldn't have a job; nor did she tell any Union Representatives.

She argued on the floor with fellow employee, W. Jordan, who was allegedly trying to get her to go out with him. She was talked to by Mr. Gish about this arguing on the floor. It developed the witnesses had lived with W. Jordan, a black, since May, 1975. She admitted attempting to sell a fifty dollar ($50.00) ticket to Stallworth for a motel party with women and liquor; that she never sold any, giving the tickets back. She had also tried to sell one to Gish.

D. The next witness, a Towmotor Operator, told of complaints to Sears about his brakes which were not fixed; that later Sears threatened him if he filed a grievance over the incident; that Gish talked to him about filing grievances stating, "you can file all you want, they don't mean nothing to him." Stallworth threatened to get him if it was the last thing he did; that Sears told him the Union was selling him down the river.

He admitted filing several grievances the past year and being told by Union Officers they were going to Arbitration, with one of the grievances lost, which he found in a barrel. He denied offering Committeman Showman a percentage of Holiday pay if he got it.

The parties stipulated any witnesses from the second shift who were not called would testify to walking out August 28th and September 9th on an unauthorized work stoppage; refused to return when asked to do so by Union officials; that day shift employees were not called as witnesses would testify because of threats by others, they refuse to identify either because the particular employee would not testify as to the names, or did not know the names.

E. The male witness had been employed a year to August, 1975, returned two days late from vacation, failing to notify the Company, he would be detained due to car trouble, and was discharged. He claims A. Stallworth stated no grievance could be filed on the premises; that he thought one had been filed when Chadwell, Acting Steward told him Simmons would file it. He never followed through with Union officers to find out the final disposition of his case.

F. A male, four years of service, said he stayed out following the walk-outs because of fear; that Foreman Isaiah followed him to the wash-room and rushed him to get back to the Press. The Foreman picked on him, and also screamed and yelled at him about his work.

G. A male witness employed one year testified he was on the first shift in August and September, 1975; that on August 29th, he did not work because of the walk out and many employees standing around, however, September 2nd to September 9th he was on vacation but returned to work on the 8th and 9th but not on the 10th due to the walk out. He told of his problems with Foreman Sears who cursed him and threatened to get rid of him, giving him a last warning for walking off the Press. He did not grieve over the treatment by Foreman Sears.

H. A male floor inspector with one year's service testified he did not work August 29th or September 10th because of a threat by an individual; that he had a run in with Foreman Sears over his alleged threat to attack him, related to him by Gilbert Rice. A meeting with the Company followed in which Sears admitted he was probably wrong. When first employed he was on the second shift and had shut down a job but was overruled by Stallworth. He put it on card which protected him against a charge of improper inspection. Stallworth after a similar occasion arose, threatened to get him if he sat down in the inspection room as well as also get Simmons, An Inspector. He did not file any grievances against Sears or Stallworth.

This witness was recalled for further cross examination and in answer to a question whether he had exposed himself in the plant before female employees, denied it.

I. A maintenance man with seven years service stated he was Financial Secretary of the Union and was Acting President on August 28th when he, along with two other employees, saw two Foremen, Gimperling and Sears, at a pub. Sears told him, "he had one more day and that day is going to be hell". About 6:00 p.m. a phone call to his home advised the employees had walked out. He went to the plant, was told by the second shift employees, after he tried to get them back to work, they first wanted the names of the two witnesses to the Press cheating charge. He talked with Gish who told him as far as the Company was concerned they were fired for walking off the job. The employees told him their disgust with the Union and the grievance procedure. On the 10th, he didn't go in to work because of threats, and the fact he thought he could do more outside to get them back to work than working.

J. A set up operator and work leader with eight years seniority, and Committeeman, testified similar to other Officers of the employees loss of faith in the grievance procedure, Holiday pay, and the release of the four on the Press. Nothing results from grievance meetings and when the employees heard the outcome of the four, they became upset with the Union Officers and the Company. He has had lots of problems with Foreman Sears who would say to him "none of your damn business, get back to work," who cussed and raised hell which he gave back to Sears. An hour later, Sears would apologize. He denied asking an employee for a percentage of any money he was able to get through grievance. The incident involving O'Connor and Simone who was ordered out of the plant, Sears told him if he didn't get back to work he would be fired.

Simone was recalled and mentioned the fact the Union complained to the Company about the attitudes of Sears and Stallworth. At one meeting the Company brought Stallworth and Foreman Isaiah in with both denying charges attributed to them.

K. An employee, Class A Tool and Die, who had been discharged but re-hired about September 23, 1975, and a Shop Steward previously, said he did not return to work September 16th as per instructions in a Company letter for he was afraid when he saw a crowd of people outside the plant. He had a problem with Sears over a rate and when he approached Sears who grabbed hold of his shoulders, shook him and told him to get out of his face or he would knock him down. A meeting with the Company followed, Sears denied the charge, later Sears said he was sorry if there was any kind of mishap about it. At the meeting, no Company representative warned Sears about his relationship with Union representatives. He told of

an incident involving Stallworth since his return to work in which an Inspector attempted to shut down a Press with Stallworth cursing her and telling her it was not going to be shut down.

L. A female employee who worked at the Company some six months in 1974 told of Stallworth touching her body; that she told him to quit but he wouldn't. She told her husband who also worked at the plant about the incident. Stallworth asked to take her home, to go to his after hours bar, and continuously bothered her. She was finally discharged by Stallworth with nothing ever heard about her discharge. A grievance was filed and dropped by the Union.

M. The above employee's husband testified he tried to warn Stallworth about touching his wife but Alex went into a swearing rage, ordering him back to his Press. He also related a Press incident over a bad hit when Foreman Sears blew his top, cursing him all over the place. The then Superintendent made Sears apologize. At another time, Sears threatened to fire him if he filed a grievance.

N. A night shift Steward, employed six years, claims he received complaints, prior to the walkouts about safety, language Alex Stallworth was using, and the way he treated people; that Alex remarked to Jim Lewis and himself, a couple of weeks before Mrs. Waldron was fired, that he was going to see her and her husband on the bread line. He told of safetys on Press 15 that do not work. On Press one Alex refused to get a table fixed or repaired, finally sticking a board underneath which a towmotor could knock off. An incident occurred with Alex accusing him of knocking papers out of his hand during a discussion involving an employee. Alex acted like a wild man in front of Gish, calling the Steward a liar. Alex threatened to fire him over a towmotor incident in-

volving gasoline, and that he would see the wild night shift fired.

Referring to the night of August 28th, he was accused of starting the walkout by Superintendent Gish. As for Alex Stallworth's language and treatment of employees he has been to Gish and Trego about it with nothing ever done, leading to loss of faith in the Union on the part of employees.

According to the Company, the employees are liars and Alex Stallworth is not. He never heard back on grievances that he filed, two were lost and on the balance the Company said "we will get back to you". Employees did not want to grieve because they would be treated like a dog afterwards. When he complained to Local President Tom Heffernan and Vice President Mary White they did nothing. The incident on Press 15 with the safety straps not working was a responsibility of his as a safety man, however, he did nothing about it for Alex Stallworth would overrule him and run it, saying he had a special OK to operate the Press.

O. A female employee, with one year of seniority, and a Press Operator first shift, testified concerning Foreman Sears using foul and obscene language about her; that she complained to him who denied the language was as charged to him; that she threatened to sue him. On Press 33 she was not making the rate so Foreman Sears yelled at her and threatened to fire her. At a Union meeting, after a walkout, she talked about returning to work with several threatening to throw her out of the Union hall. She reported off work September 9th and on the 10th also reported off to Gish. On Thursday, she reported for work with a Doctor's slip but did not go in the plant because of the walkout. On the 15th she phoned Trego about her fear of going in to work who told her

to go home, that letters were being sent the employees. She attempted to go to work the 16th, but someone jumped on her car (Dave Marsh was with her). After reaching the plant she saw employees outside so they left for Manners. About 8:30 a.m. they reached Trego by phone, told her the problem attempting to report for work, receiving an answer they were fired at 6:30 a.m.

She denied making advances to Foremen about dating and going to picnics, admitted giving whiskey to Gish, Stallworth, Sears and Gimperling. The incident involving Sears and his swearing led to his later apology. She told of three occasions when safetys were not working properly on her Press, however, after reporting the problems were corrected. Also brought out was turmoil at the Union hall when they threatened to throw her out of the meeting. Further, as to gifts she brought meats and homemade jellies for female employees.

P. A male arc welder, about a year of service, told of lack of flash screens on welders; that his eyes were affected. To get new gloves from Foreman Isaiah he had to have three fingers showing through the gloves; the bare fingers would get burned. He told of a big wheel, 10 feet in diameter, falling and putting a four inch hole in the pavement. Also a twelve inch wheel came down, cutting his wrist, leaving a scar; that 90% of the presses were unsafe, but to file a grievance was useless.

Q. A female employee with one year's service, told of her getting a transfer to the second shift to get away from Foreman Stallworth; that August 28 she did not work, and on September 9th she worked one hour and went home because of illness. She complained at one time to Stallworth about a Press repeating receiving a reply "that machine doesn't repeat". As for grieving, it wouldn't do any good.

It developed this witness is one of four involved in the Press cheating charge.

A grievance was filed for Holiday Pay, resulting from her absence one of the days before or after, which was denied.

R. A female employee with nine years service said she engaged in the walkouts because of the failure of the grievance procedure; that one never knew whether he had a job at the end of a shift.

S. A male employee with three years service, said he was on vacation during the August walkout and on September 10th, however, the vacation ended while the employees were out but he did not work for he had been threatened. He told of signing a note for the Company for $396.36 representing overpayment of his hourly rate from November 11, 1974 to May 3, 1975 (payment at $3.58 per hour instead of $3.29 as a Utility Man). The note called for re-payment at $10.00 per week, however, when he received his final check the Company took out $120.00 giving him a check for $2.58. He was re-hired September 23rd and has been repaying the balance since. He told of Foreman Sears swearing at him at one time.

T. A male employee, formerly a Foreman in Shipping for two years, who returned to the bargaining unit, seniority date originally March, 1966, testified about a grievance he filed as a Steward for R. Seymour which Superintendent Gish told him he was tearing up, however, it developed the issue was settled.

U. One of the two suspended employees was recalled and said Alex Stallworth told the two of them the Company was using them and they were not guilty.

Mary White, Local Vice-President, denied the statement attributed to her about a black employee allegedly

exposing himself; that what she told Trego was two or three female employees complained about a black man making obscene remarks to them near the time clock as they reported for work. She did not identify the black man to Trego.

In its post-hearing brief, the Union argues the Company discharges must meet the "just cause" concept of Section 7 of the contract; that the Company attempts to justify its action by claiming a violation of the no-strike clause and the penalty assessed by it should not be disturbed. As to "just cause" the Union contends the Company is bound to afford due process prior to discharge; and was the Company guilty of discrimination by failing to even attempt identification of leaders, and discrepant treatment by rehiring some and not others without establishing degrees of guilty; and more important, the application of the "Clean Hands Doctrine" and the extent it should be considered in mitigation of these discharges.

Referring to the Company allegation some of the grievances were improperly filed, the Union referred to CL-4887, signed by the Local President, on behalf of four employees contending the four were discharged after leaving the plant and not given the benefits of Section 20, Step 1 of the grievance procedure. The employee was not given an opportunity to enter the plant and enter into a discussion per Step 1, at which he would have been available to sign such grievance.

In Section 25 provision is made in the No Strike Clause "subject to the grievance procedure", not part but all including Step 1. Failure of the Company to comply with Step 1 estops the Company forfeiture claim per Section 19.

The Union contention is Section 19 applies to all grievances *except* discharge grievances. The second paragraph of Step 3 provides *discharge* grievances must be filed in writing within three working days after receipt of discharge whereas Section 19 provides a time limitation of fifteen calendar days; starting at Step 3 compared to Step 1 in Section 19. Discharge grievances and the signature of the employee is not required under the language dealing with the filing and processing of discharge grievances. As bargaining agent, the Union is authorized by law, contract and by the UAW Constitution to file and process or refrain from filing and processing grievances on behalf of its members. As to the fourteen other grievances signed by the Local President the same Union arguments apply.

The Union attached Company counsel's statement, the only question before the Arbitrator is whether or not there was a violation of the no-strike clause, not whether one was called a liar, or once somebody hit another in the nose or somebody spat on another, all irrelevant. It says the Company position is it could violate with impunity any section of the contract, could degrade any employee, could threaten Union Representatives with discharge if he protested any Company actions, and the only recourse was for the Union to grieve under a procedure the Company flaunted, and refused to accept.

The Company argues the Arbitrator is restricted in Section 68 to ruling on specific items in the contract; that there is no specific coverage in the contract regarding Company obligation to restrain Supervisors from engaging in lewd and reprehensible sex proposals to female employees, nor anything obligating the Company to punish or dismiss Supervisors who manhandle and threaten Union Committeemen. Using the Company argument the Union couldn't

grieve over the above for the reason the type complaints are not in the contract.

The Union mentioned the Mastro Plastics case decided by the U.S. Supreme Court (37 LRM 2587) holding the no-strike clause does not waive employees' right to strike against unfair labor practices of the employer. While no unfair labor practice charge has been filed against the Company, this fact should not affect the application of Mastro Plastics rationale.

The Union recalled the testimony of Company witnesses, however, the Arbitrator will only touch on the highlights of said testimony as related by the Union in its brief.

As to Foreman Alex Stallworth, the Union points to his statement (Vol. 1, Page 82, line 20) he had no solid evidence against the four (4) on Press 1 but concluded their denials were all lies. The two walkouts that followed were culminations of discriminating suspensions and discharges; and the result of Company unfair labor practices.

Referring to Carol Trego's testimony and her statement that at 7:15 p.m. September 9th Lange told the Committee to go get the employees back to work by 7:30 p.m. It questions how this could have been done in fifteen minutes, after which Lange shut the plant and sent those at work home. The Union questioned as to how Koslik and Dale participated in an "unauthorized strike" while serving a 20 day penalty was not explained.

Superintendent Gish told of Foreman Poole attempting on September 9th to get the employees back to work, but no top management personnel asked them to return to work. He identified pictures of employees outside the plant after September 9th peacefully walking or standing out in front of the plant.

Mentioned in relation to pictures of employees walking or standing outside the plant is the fact some in the picture have been rehired, showing discrimination in rehiring. Paul Boxler and Dino Tambini were two employees so identified and rehired.

The Union referred to the Company claim it lost the Rockwell account because of the strike, and the testimony of Superintendent Gish who admitted having problems with Rockwell before the strike. Gish offered Dave Derita, who had been fired, a job as a Supervisor and the Union is unable to reconcile said offer with Derita's unfitness as an hourly employee.

The Union attacked the testimony of President Lange who told of Company loss of business from the strikes and the fact the Union failed to discharge its duties under the contract, however, he failed to concern himself with employee abuses by Foremen.

The Company did not have any evidence against the two females on Press 1 but gave them 20 days suspension for just being in the area. J. Herndon's testimony, according to the Union, consisted of an attack on employees who walked out of the plant, but nothing about his instructions to Foremen back in February, 1975, which, if given, were ignored by Foremen.

The Union mentioned the testimony of Local President Heffernan, who cited loss of employee faith in the Union officers in processing their complaints; and the fact technicalities were often thrown out by the Company blocking settlements, leading to the employees' conclusion the only redress was to walk out of the plant.

Lack of due process was present in the Company handling of discipline.

John Yates testified concerning the two walkouts; that most of the employees wanted to work, however, because of threats were unable to do so.

W. Casstevens told of the Company reneging on an agreement it made in a meeting he attended; that Supervisor misconduct was called to the attention of the Company. J. Simone testified regarding his tenure as service representative 1967 to 1975; that actions of Foremen toward employees was called to the Company's attention with nothing done about it; that they reneged on the 50¢ offer for Skilled Tradesmen.

The Union reviewed in its brief testimony of many Union witnesses who had been discharged, the Arbitrator has recounted this testimony earlier.

Union comments were then made about the testimony of Company rebuttal witnesses.

Carol Trego was attacked for unfounded allegations of impropriety toward one employee. She couldn't identify even one grievance that was settled by the Company; failing also to bring in proof of any settled grievances.

Lange's denial of knowledge of Foremen misbehavior was contradicted by Company witnesses who acknowledged especially complaints against A. Stallworth.

As to Sears' denials of all charges against him it is clear this was done to protect himself with the Company.

The Union attacked the Company for its broken agreement with an employee who had been overpaid a large sum of money; that he was to pay back the amount on a weekly basis, however, the Company took out of his final check almost all the pay due, leaving him with a check for $2.68. He has been rehired and as of the hearing date he testified owes about $5.00 to the Company.

The complete denials of all allegations against him by A. Stallworth brand this convicted felon as untrustworthy.

Trego recalled numerous ex-criminals hired by the Company, all hourly with none in a Supervisory capacity.

Additional rebuttal witnesses appeared for the Union and Company, however, the Arbitrator will not recite their testimony at this time.

In conclusion, the Union points to the Mastro Plastics Company case (37 LRRM 2587) in support of its contention unfair labor practices by the Company resulting in a walkout are sufficient to protect the status of such employees. Actions by the Company in tearing up grievances, threatening Committeemen with discharge for writing grievances are unfair labor practices that nullify the no-strike clause.

Under the doctrine of the clean hands issue, the Company cannot come to an Arbitrator and ask the discharges be upheld where it has been flagrant in abuse of not only the contract but of the employees themselves causing the walkout; and lack of due process is not being questioned about their actions or given a chance to explain.

An earlier arbitration case at this plant decided by H. Dworkin at 48 LA 107 involved walkouts with the Ringleaders' discharges upheld.

Requested is reinstatement for all who were not found to be Ringleaders, meaning 100% of all the discharged employees, for the reason no proof was offered as to any Ringleaders by the Company.

THE COMPANY POSITION

Following presentation of its position in its opening statement, the Company offered in succeeding days some forty (40) exhibits, the details of which will not be touched upon at this time.

Alex Stallworth, Press Room Foreman for the past three years, stated he was on the second shift in August, 1975; that his job consisted of overseeing the presses for which he took counts, assigned jobs, and ordered repairs for the machines; on August 28th, he had Press One under his authority assigning two men and two women to it, who during the first hours operated 75% below production, with Alex telling the four to pep it up, resulting in their reaching about standard the second hour, a total of 326 pieces being standard. At 8:00 p.m. took another count and found Press One up to 200 per hour which he felt was not right at the speed they were working, so he watched for another hour with the count showing approximately 300 pieces. The Operators at the end of eight hours qualified for ten hours pay.

About 11:30 he contacted Steward Doshak telling him about Press One and the fact Alex had decided to conduct an investigation. The operators were Dorothy Dale, Frances Koslik, Wayne Thomas and Wallace Jones. The incident was reported to Jim Gish who suggested Alex call a meeting to find out from the employees what happened. August 21 the two girls and Steward Doshak were called to his office and denied cheating. Alex also talked with the two men who likewise denied cheating. Alex gave the two men an indefinite suspension. A few days later in talks with Trego it was decided to suspend the two girls which was done on the following Wednesday, August 27th. The same day all four, along with Steward Doshak met with Alex, Trego, and Gish, with each interviewed separately

as to the Press incident of August 20th. It was decided all four were lying so their suspensions were continued.

On cross-examination, Alex admitted he at one time, called Doshak a liar.

Carol Trego, Personnel and Industrial Relations Manager, the past two years, stated about 5:15 p.m. August 28th she had Foreman Miller and Steward Doshak in her office to give a decision to Doshak as promised the previous day. It developed Doshak came on his own to ask for the Company's decision which as Trego told him, the four employees were to be terminated. Doshak questioned as to why the two girls were being terminated and then left after Trego said, "All four were on the machine and should be treated equally." The four were not told of the decision that day by Trego for they were on suspension.

About 7:15 p.m. Gish phoned the employees had walked out. Trego returned to the plant at 7:30 p.m. seeing the employees outside the plant. Foreman Poole tried to talk to the people into coming back to work for there was a grievance procedure to follow, and nothing could be accomplished while they were out. She phoned Yates who came to the plant at 10:00 p.m. and urged a return to work for they were out on an unauthorized strike. She left at 2:00 a.m. but overheard Lange say to Yates they would have to return to work before the Company would meet with the Union, later saying he'd meet the next morning. The next morning the first shift stayed out. A meeting was held in the morning and an agreement was reached for employees to return that afternoon to qualify for Holiday Pay (Labor Day) and the four suspended Press Operators would be returned and paid for loss time pending Herndon's investigation of the Press One matter next week. No employees returned to work that afternoon to qualify for Holiday Pay but returned Tuesday, September 2nd.

After Herndon completed his investigation, Friday, September 5th, the Company made a decision about the four Operators, however, it was not made known to the Committee until Tuesday, September 9th when Lange told them the decision to fire two men and suspend two girls twenty days, and also cautioned he would not tolerate any more walkouts and that he "didn't want to fire anyone."

About 5:15 Foreman Miller, Stewards Doshak and Simmons, reported to the office, with Maliace Jones and Wayne Thomas called in and all were told Jones and Thomas were discharged, could work or not until the end of the shift or leave then with pay to the end of the shift. Both decided to leave, turned in safety equipment and left. About fifteen minutes later the walkout took place. Lou Simmons, Steward, came in and phoned Heffernan about the walkout. Lange and Gish were not at the plant, but Lange returned at 6:30 p.m. They saw Committeeman Dave Derita still working overtime from his first shift. He joined Trego and Lange in going out to the employees with Derita pleading for a return to work. Dan Showman told Lange they wanted the names of the two witnesses the Company had regarding the Press One cheating matter, which was refused by by Lange who warned them to be back to work by 7:30 p.m. or they would be fired.

Subsequent events related by Trego concerned eight employees who retained seniority for the reason of absence at the time due to industrial injury, sick leave, personal leave, or vacation.

Trego did not observe all seventy three day shift employees on the picket line, saying others saw them. She sent out the letters of September 13th and discharge notices

after the day shift did not return September 16th. J. Gish, Plant Superintendent since March, 1975, formerly in the bargaining unit, employed nineteen years, stated the strike events as related by Trego. During the strike names of strikers outside were written, those seen by Gish and Foremen. Some of the names were written by him on napkins (after returning from a restaurant).

From September 16th on some seventy new employees have been hired. He understood three hundred applicants were at the plant on September 17th.

Gish identified numerous pictures of pickets taken by David Lange, son of E. Lange, recalling their names. He denied threatening employees with penalty if they filed grievances. Gish said September 17 or 18 Dave Derita came to his home and in the conversation Gish asked Derita if he would consider a Supervisor's job. Gish told of Rockwell removing dies from the plant September 19th and the loss of G.M. parts business during the strike.

T. Gimperling, Foreman two years, identified names of pickets from notes written by him as he observed them.

E. Lange, Company President since March, 1975 stated in relation to the August 28th walkout Gish told him about it; that Yates appeared and at midnight asked for a meeting the next morning. He told Yates if employees returned he would meet. He left at 2:00 a.m. and returned at 6:00 a.m.; that at 6:30 a.m. none of the day shift came into the plant but remained outside. About 9:30 a.m. Herndon, Stallworth, Gish and Trego were present for a meeting with the Union.

Many items were discussed beside the four Press One employees, namely charges against Stallworth, among which were propositioning female employees. Herndon

would investigate the counter cheating charge against the four Operators the following week while all employees were back at work. The Company offered a chance to earn Holiday Pay if all worked the second shift Friday, August 29th. None reported for work until Tuesday, September 2nd. Yates explained he thought the decision was more than fair. The following week Herndon investigated the Press matter and on Friday a decision was made the two males were to be fired and the two females suspended twenty days. Herndon later talked with Yates and set up a meeting for Tuesday, September 9th to notify the Union Committee. He related the morning meeting with Heffernan and White, and the afternoon meeting with the Committee, wherein he told them of their responsibilities and if the second shift walked out there would be serious consequences, including firing of them. About 6:00 p.m. Gish phoned saying they had walked out.

Shortly after reaching the plant about 6:30 p.m. Lange spoke to the employees, mainly Heffernan, Dave Derita, Lou Simmons and Dan Showman who had asked for the names of two Company witnesses to the Press cheating, and, if given the names all employees would return to work. He told them the names would be produced in Arbitration; that they had until 7:30 p.m. to return to work or they would be fired. At 7:45 p.m. when they had not returned to work they cards were pulled; and the probationers in the plant were sent home to avoid any problems in the parking lot late at night (they were paid until midnight). Lange said he talked with Dan Showman about the time of the firing (he had been the one asking the names of the Press witnesses) and discussed following the grievance procedure.

Events at the Court on September 11th were related by Lange who told the Committee the second shift was dis-

charged but the day shift should report the next morning. On the 12th some one hundred people were outside at 6:00 a.m. milling about. The Company had arranged for Police protection. Mary White drove up in a car, rolled down the window and said she was not going to cross the picket line. Lange asked "what line?" There was no line.

Lange told of the loss of the Rockwell account and partial General Motor loss and identified a statement showing lost gross sales of $700,000.00, costs and expenses of $28,000.00 as of the end of October, 1975. Eight to ten jobs were lost as a result of Rockwell pulling their work out of the plant; as a result of schedule problems with G.M. work was sublet resulting in a loss of 12 to 24 jobs (people) later changing the figure to 14.

On September 17 about 300 applied for work. There are 115 now in the unit compared to a previous figure of 150 to 160; and operational efficiency is up 30%.

Lange identified many pictures of employees outside the plant. At a meeting with the Union, he recalled the statement being made that "an overwhelming majority would be rehired, if space was available."

J.C. Herndon, Secretary and General Counsel, and a Director, testified concerning conditions at the plant upon his arrival at 8:30 a.m. August 29, 1975 following the walkout of the night before; the settlement arrived at and his proposal to investigate the Press incident the following week. He also told of Union complaints against Foreman Stallworth, safety, and grievances not being expedited. He recalled Steward Doshak, relative to the Press counter matter "everybody has a little larceny in their hearts." He said the Company would not tolerate any type of dishonesty.

The four suspended and later (August 28th) discharged Press employees were to return to work and be paid for lost time (although there had been a misunderstanding about back pay.) Other employees who worked the Friday, August 29th second shift would qualify for Holiday Pay.

He detailed the investigations of the Press and counter investigation the following week. On Friday he told Lange the results of his investigation; the charges were true; that he felt discharge proper for the two men and 30 days suspension for the two females, which Lange cut to twenty calendar days. The action was delayed until Tuesday, September 9th so Yates could be informed.

The Federal Court order of September 11th did not get the employees back to work Friday, September 12th so it was decided to send letters to day shift employees to report by Tuesday, September 16th. Later that Friday, Yates called and a Tuesday morning meeting was set up with Yates, Assistant Director Warren Davis, and Union Counsel, R. Phillips. Herndon did not recall if he told Yates about the letters that were going out. The parties met for a couple of hours, with Davis leaving after an hour. The Company refused to reinstate the night shift.

The next day Phillips called and Herndon stated the conditions under which the Company would reconsider former employees. An hour later he received a phone call from Lange that about 100 employees were at the plant to fill out applications and told Lange they were to go to work the following morning.

Herndon prepared a memo, later posted at the plant, after talking with Phillips and Yates, which memo outlined the understanding regarding former day shift employees. He recalled use of the term "as many as possible"

in reference to rehire of former day shift workers, not "overwhelming majority".

In rebuttal to Union evidence the Company presented the following witnesses:

J. Gish regarding failure of the grievance procedure said he sat in a lot of meetings with the Union, with some settled by each party. Overtime grievances of Anderson and Capes were settled on the basis they were overlooked and would get overtime to balance out over a ninety day period as in the contract. Someone allegedly told the two girls if they did not grieve they would be fined $100.00 and maybe lose their jobs. As to a Shafer grievance two stewards couldn't agree on filing with one given time but didn't file it, and time to file was denied the other steward.

Anderson tried to sell him a ticket for a stag party stating she knew who the girls were that were to be at the party. He denied ever tearing up a grievance; did not talk to Dixon about the complaint lodged against him.

C. Trego stated in 1975 there were 50 grievances filed with some 30 settled. No personal grievances were filed against A. Stallworth or E. Sears. The Mary White complaint against an employee could have been but the one identified from her description. There were no improvements in labor relations after O'Leary and O'Connor left in the spring of 1975. Vacation pay was settled in December, 1974.

The Showman grievance involves absence the day before a Holiday and, with no proof of sickness offered for the above pay was denied. Allegations have been made against Foremen and discussed with them but the Company has not disciplined any members of Supervision. The case of a Company error in discharging one McGee was

mentioned in that he was reinstated by Company actions and given back pay.

E. Lange testified no action has been taken against Foremen for no proof has been offered to support the charges. Stallworth never told him the two girls were innocent of the Press charges.

E. Sears denied having words with Simone following the conclusion of a meeting at the foot of the plant stairs; that he did tell the Committee to get back to work.

He never told Shafer the Union was selling him down the river. Denied ever telling Simmons he could not file a grievance. He spoke to Dixon about obscene language and too many breaks.

Yeager threatened to blow up his house. Sears denied the statement allegedly made while in a pub to Rice. "You will have one more day to be Jesus Christ and the last day will be pure hell." Admitted joking with Rice about him being Union President. He never cussed out an employee but has used bad language, but never to an employee. He never yelled at Dan Showman, but did apologize to him. He never grabbed Paul Boxler by the shoulders. He never threatened any employee about filing a grievance; nor about firing her for not making the rate. Several times she has made overtures to him.

A. Stallworth, Foreman, the past three years, stated he started in the paint room; had problems over down time which he solved by moving employees to other work, which employees he did not like. He detailed the discharge of an employee for refusing a work assignment, followed by considerable cussing directed toward Stallworth. He told of absentee problems with one female employee who was struck in the head with a hammer, allegedly by a friend.

He denied the kidnapping charge saying Jordan told his girl friend to ride him to Grant Street; that no personal advances were made by him. He denied threats to get certain employees fired. He denied touching a female employee, and saying he would see she and her husband on the bread line. He denied all other charges and still claims he was told by two employees the Union was out to get him.

Stallworth admitted on May 24, 1964 he was found guilty of breaking and entering and burglary; sentenced one to fifteen years; and a second time he was sentenced to the penitentiary for one to twenty five years, unarmed robbery. He denied a third case charged to him. Stallworth claimed half the employees are felons.

C. Trego testified according to applications for employment twelve listed criminal convictions.

H. Poole, Tool and Die Supervisor since 1974 stated he was formerly in the bargaining unit; a Union Vice President and Steward in 1974; that August 28th he talked those who had walked out but had no success. In the 1974 negotiations he and another Tool and Die man were on the negotiating Committee when the Company offered fifty cents and hour increase for his classification, however, the Union Committee felt it would not be ratified for it was for one group. President O'Leary said it would be discussed again for he felt they were underpaid. He did not say this was an ongoing continuing offer. O'Leary did not think the majority of the then Class A men were fully capable; he indicated he would discuss the matter again in September. O'Leary called the Tool and Die men, along with Dave Derita to his office and told them his intention to hire more men and if successful he would adjust their wages. There was some talk about tests to qualify for a Class A rating.

Poole admitted negotiations ended in May and he went to Supervision in June, 1974.

T. Gimperling, Foreman two years, told of his early experience with T. Heffernan over work gloves when Tom told the Press operators not to wear the gloves, thereby causing a fifteen minutes work stoppage. O'Leary spoke with Tom but no disciplining action was taken. Some other problems with Tom were over stopping his work to talk shop with fellow employees in the plant shop he was responsible for a short work stoppage in an attempt to get a rate in a mail box job. A rate was put in the job but problems remained leading to a discontinuance of the product.

An overtime issue raised by two females who were not told of such work being available for they were not in the Welding department at the time was resolved by later giving them overtime work. The two later claimed the Committeemen Simmons and Steven White threatened blackball and a fine if they did not grieve. The two Union men caused other problems for various Foremen.

One female employee gave him a couple bottles of liquor and made overtures about meeting him at a motel.

He did not discipline any Union men for abusing grievance time for he thought it would bring on further hostility.

S. Miller, Foreman since August 4, 1975 stated he was in the unit three and a half years. He related the incident involving refusal to clean bolsters in which the employee was terminated, later reinstated. He identified two men, Chadwell and Latchaw leading the walkout September 9th. His experience with Heffernan involved Tom's refusal to file a grievance for Miller about Foole's father-in-law wearing shorts in the plant. While he was in the unit driving a towmotor he and employee would grab each other's

genital organs, but not in front of females. Related also were taking phonecalls from a female employee, asking for A. Stallworth; the same one asked him to go out and eventually gave him $70.00 worth of meat.

A probationary employee who started work in August, 1975 on a Press told of Doshak telling three of them on the Press to slow down or they would be fired; that this September 8, 1975. He related employee Chadwell telling another employee that they were to walkout at 7:00 or seven minutes which they did. The first walkout Doshak told a group near Miller others were going to walkout but they should not go out for they would be fired.

Another employee, probationer at the time in September, 1975, was on the Press mentioned above told of Doshak saying to slow down but he did not hear him make any threats. He later admitted the reason as stated by Doshak, for slowing down the press was for time to allow the Stocker to get a chance to get caught up. H. Rabe, Labor Counsel, testified he was been counsel since early 1974; that he was in half the negotiation meetings, that O'Leary was not willing to raise maintenance rates but willing to raise Tool and Die men fifty cents an hour if they qualified as Class A.

O'Leary mentioned 70% of that work was farmed out because of inability to do the work by the Company men. The Union caucused and then refused the offer.

O'Leary then stated he would sit down in three to six months and negotiate an "ongoing program", meaning apprenticeship and said "it may be a dollar an hour." October 7th, O'Leary wrote the Union for a meeting on Tool and Die but the Union failed to reply.

Simone called regarding O'Leary and O'Connor and Union problems with those men; that Rabe met in April or

May over some 18 grievances along with four major ones. During three days of meetings, 4 or 5 grievances were washed out. Rabe had met with the Shop Committee and told the Committee it was investigating grievances. Casstevens joined in on one meeting and blew up; that multiple grievances before one arbitrator was mentioned with opposing views leading to agreement to arbitrate that question.

He stressed Union Representatives Simone and Yates have been unavailable for processing cases to arbitration. Omissions in the contract were mentioned, however, the Union has not said what they were.

The Union offered several rebuttal witnesses, one denied stating to Stallworth the Union was out to get him fired; another claimed Stallworth told her she was not guilty of the cheating charge; and another disclaimed telling Trego about an employee exposing himself near the time clock, but said he was using profanity.

In its post-hearing brief, the Company outlined events at the plant from August 20, 1975 to on or about September 12th. It believes three questions for decision are:

1. Whether grievances which were not filed and/or processed under the terms of the collective bargaining agreement are arbitrable;

2. Whether or not certain employees were unjustly denied seniority for prior service upon being rehired following the strike, and

3. Whether or not approximately 112 employees were unjustly discharged for having engaged in a protracted illegal strike.

Pertinent contract clauses were enumerated, and in its introduction the Company pointed out inconsistencies

in the Union approach such as charged of discrimination in selection of those discharged; claim of "protected activity" for Company refusal to allow employees Union representation. It says the Union admitted the walkout was not justified, later saying it was understandable. The Union agreed the Arbitrator should determine which employees, if any, were honestly afraid to report to work as opposed to those not genuinely afraid and/or those who had threatened their fellow employees. Later the Union said the strike was called to protest unsafe working conditions and/or because of alleged abuse of female employees. Further, the employees were denied due process of law. The Union charged the Company provoked the strike. All such claims are without merit the Company contends.

The no strike clause was violated yet the same employees now seek refuge under that contract. The strike does not fit the Mastro Plastics Corp vs. L.R.B. case exception as to unfair labor practices.

Several cases were cited referring to no strike clauses and several in support of its contention.

Section 19 was not complied with when 18 employees failed to sign grievances which were processed by Local President T. Heffernan.

The Union has ignored equity in raising the question of the "clean hands" doctrine although claiming the principles of equity apply. It says equity does not apply where the claimant has failed to exhaust administrative and/or other remedies; namely, the grievance procedure.

A principle ignored by the Union is that of "the wrongdoer is not permitted to profit from his own wrong", and "equity follows the law".

Further "he who seeks equity must do equity" especially in the law of contract. An application of the principle arises where a Plaintiff seeks an equitable decree of specific performance, although if such relief is given, there would be no assurance that the Plaintiff would be obliged to perform under the same agreement.

The true litigant in this case is the grievant and that person is guilty of unconscionable conduct and thus is barred by the "clean hands" doctrine.

As to the September 9th walkout it was a duplicate of the August 28th walkout for which the Company was lenient. The Company did make it clear it would not tolerate any further strike activity. At the time of the walkout of September 9th there was no claim of employee unfair labor practices, abuse of employees, safety conditions or any other matters raised by Union counsel at the hearing. All that the employees asked September 9th was the names of two witnesses to the Press cheating incident.

The arbitrator will not now detail the cited case of an illegal strike involving Mack Trucks 64-1-ARB 8422, Wallen, Arb. other than to say the Arbitrator stressed the compliance with the no strike clause and anyone who instigates, leads, condones, or participates attacks of the fundamental basis of collective bargaining. The night shift grievances should be denied.

The Company maintains the day shift discharges for illegal strike activity should be upheld.

Officers of the Union were notified of Judge Contie's injunction of September 12th by service through the U.S. Marshal yet failed to heed this order, yet they ask reinstatement.

It says there was mass picketing with signs indicating it was well organized. Claims of threats if they crossed the picket line are not borne out by the fact 67 crossed the line for paychecks September 12th.

Company witnesses testified seeing 30 day shift on the line September 12th; 10 on September 15th and 5 on September 16th it is claimed the strike and picketing continued September 17th.

After writing a warning letter to employees (day shift) September 13 ordering their return by September 16 they failed to return, thereby terminating themselves.

The Company attacked the International for failing to take affirmative disciplinary action toward those who violated the contract. The Union officers did not set an example by returning to work. Thousands of dollars was lost by the Company and it sustained injury to its reputation.

All members of a Union who engage in an illegal strike can only be viewed as Union action (Eayer Express, Inc. vs. Teamsters, 44 U.S.L.W. 2090 - 3rd Cir. 1975). It says all grievances should be denied.

DISCUSSION

This Arbitrator is cognizant of the importance of this case and its uniqueness in that there are no reported cases in point. This complex case covered nine days hearing, some thirty witnesses, over forty exhibits, and over eighteen hundred pages of transcript, the analysis of which has consumed more time than this Arbitrator ordinarily requires.

The strike situation presented here, covering two occasions, August 28, 1975 and September 9, 1975, following

which 112 were discharged of 150 employees has left its scars in monetary losses to all concerned.

Many motions were directed to the Arbitrator for ruling, some of which were deferred. Any not ruled upon are be to be considered overruled.

The first motion is a request to remove 18 of the grievants from this case on the basis they did not sign their individual grievances, T. Heffernan, Local President, signed on behalf of four (4) and fourteen (14) of the employees. The Company says the employees signature is mandatory for the word shall is used. The Union maintains Step 1 could not be complied with after their discharge and they had left the plant; that the no strike clause states a violation is subject to the grievance procedure, all of it; that Step 1 says fifteen (15) days and Step 3, three (3) working days after receipt of discharge. It feels Step 3 on controls discharges with no requirement mentioned regarding an employee's signature.

The mass discharges are of paramount concern to the Union which is the original party to the collective bargaining agreement. It would not permit rights it obtained for members to rest solely on the willingness of affected employees to prosecute claims. The Arbitrator finds the defect one of form and not of substance, therefore, it is not fatal to the Union's right to progress this dispute to arbitration.

The next motion objected to any Union testimony relating to the Union charge the Company did not have "clean hands" and the evidence offered to support it. This motion is overruled.

The Company contends the 112 were discharged for just cause in that there was a deliberate, concerted violation of the no strike clause; that the Union denounced the

employees on strike for being out on an unauthorized strike, yet it failed to affirmatively move against the violators.

The Union bases its case on the "clean hands doctrine" in the Company treatment of employees by Supervisors, acquiesced in by Management, over a long period led to their dissatisfaction with Union officers in their ability to accomplish anything in discussions with the Company. This shabby treatment, it says, culminated in the two unauthorized strikes.

Earlier it was stated the Company established a prima facie case involving contract violation of the no strike clause and the Union evidence was entered into the record following which the Company evidence was produced.

The following is a summary of Union evidence:

J. Simone, International Representative at the plant from 1967 to June 1975 (after which John Yates took over) said problems started shortly after O'Leary became Company President (1973); that on one occasion he was informed O'Leary came to the plant, second shift, intoxicated, intimidated and coerced the employees using off-color language. Simone went to the plant and found 22 employees not working after the above incident. The Union prevailed upon them to return to work. O'Leary after talking with Simone the next day went in and apologized to the second shift.

In February, 1974 O'Leary phoned saying he wanted early negotiations of the contract expiring in July, 1974.

In March or April demands were exchanged with vacations remaining the same and the Company offering 50¢ an hour increase for Tool and Die A men, which the Union felt couldn't get ratification so it was deferred. O'Leary drafted a letter he would meet in September or earlier and

negotiate the skilled trade rate. Local President Heffernan tried to get a meeting with O'Leary but could not, however, September 9th the Union Committee and Simone met with O'Leary. At this meeting O'Leary went into a tantrum, claiming the Committee hit him over the head to get this agreement; that he was in no position to grant the 50¢; to give him another month or until November maybe it would not be 50¢ but a dollar.

Simone told O'Leary he had from May 20th to come up with the 50¢ whereupon O'Leary pounded the table, started to walkout, exclaiming 'you are nothing but a bunch of dummies." The following day, Simone phoned Rabe who recalled the earlier meeting about the 50¢ saying "I was there when you people made your proposition, and it was decided to be deferred to a later date, and no later than. . .". Simone thought it was September 1st. In the meantime the Company had hired a new Superintendent named O'Connor who Simone said despised human beings. Grievance meetings became a farce, lasting 10 to 15 minutes with nothing settled. After one meeting O'Connor said while Simone was downstairs "your business is done now and you can get out." The reply was "go to hell." This was followed by daily calls from Heffernan over plant problems, one being pro rata vacations, subtracting Holidays and Vacations, and Bereavement Pay as time worked for vacation eligibility. Rabe told Simone the employees were not entitled to it with Simone saying one with five (5) weeks vacation to 40 hours would have that number of hours subtracted from the time worked calculation.

Simone met with Rabe, Company Secretary and Counsel Herndon and a Mr. Booth, banker, and Company Director and told of O'Leary pounding the table saying he had his life savings in the Company and wasn't going to let it go down the drain. Herndon said "Hell, he doesn't have

a damn penny in it. The four serious grievances were discussed, but not settled, vacations, holidays, and two discharges. A few weeks later the Company fired O'Leary, O'Connor and a few others.

In later meetings with Trego and Gish a few grievances were resolved.

June 17, 1975 Casstevens came to a meeting at Rabe's office with nothing accomplished concerning the four (4) major grievances which were later arbitrated, as to the question of a single arbitrator hearing all four cases or one arbitrator for each case. The arbitrator ruled in favor of multiple grievances before a single arbitrator.

When Cross-examined, Simone admitted O'Leary's letter stated the meeting regarding the 50¢ would be on or before November 1, 1975 not September 1, 1975 which had been changed to the date of September 1, 1975 by T. Heffernan because it was the agreed upon date in the minds of the Committee. An N.L.R.B. charge was filed by the Union over the 50¢ and dismissed.

The evidence shows the Company made an offer of 50¢ per hour for Class A Tool and Die men, which would also go to the apprentices among the group of eight upon reaching the A status. The Union contends Repairman Derita was included in the group to receive the increase. The Union says the 50¢ was deferred because of anticipated ratification problems but felt the offer was a continuing one. O'Leary wrote Simone October 7, 1974 about a personal request September 26th for action regarding establishing the skilled trades program, and again made a request to meet on the subject. As for subsequent meetings it developed Rabe told Heffernan the Committee was not investigating grievances, many of which had no merit.

Some allegations of employees are:

D. Derita, employed thirty three years, and the past five years on the negotiating Committee, mentioned employee Shafer accused him of selling him down the river on his grievance as told to him by Foreman Sears. When confronted Sears said "that's true ain't it?"

L. Simmons, Work Leader and Committeeman, told of an incident involving an employee cleaning a bolster plate in which an argument ensued with Foreman Stallworth stating after the employee said he was going home said "if you go, you quit your job," followed by "if you don't leave, I'll call the Police, and have you thrown out." The following day Simmons was told by Stallworth he couldn't file a grievance for the man while in the plant, nor in the parking lot, and if he punched out and went home to prepare it, he "would be fired." Gish the following day upheld Stallworth in that he said "if the man has been discharged he is no longer an employee and has no right to file a grievance in the plant." Foreman Sears in a similar situation threatened to fire Simmons if he prepared a grievance in the plant over the discharge.

The above two employees were referred under (a) and (b); some of the allegations against Foremen are briefly:

(c) Propositioned by Stallworth; refusal to let her go home when ill, for which she was hospitalized, refusal to take her off a Press that was giving her shocks; alleged "kidnapping" by Stallworth and molestation; told none about it, for if she grieved, she felt she would be fired.

She tried to sell tickets to a stag party, but did not sell any, asked Gish if he would buy one but he refused.

(d) A towmotor operator told of Foreman Sears threatening to fire him if he grieved over the brake prob-

lem on a towmotor; that Gish told him "you can file all the grievances you want, they don't mean nothing to me" that Stallworth threatened "to get him if it was the last thing he did"; Sears mentioned the Union was "selling him down the river."

(e) This male employee with one year's service was discharged for returning late from a vacation without proper notification; he claimed Stallworth told him no grievance could be filed on the premises.

(f) A male employee with four years service, claims Foreman Isaiah followed him to the wash room, and if he sat down, Isaiah would walk back and forth, call out his name to make sure he was there; constantly threatened him if he "didn't watch his step he'd be fired."

(g) A male with one year's service told of threats and cursing from Foreman Sears who gave him a last warning for walking off the Press.

(h) A floor Inspector told of threats by Sears to physically attack him, later Sears admitted he was probably wrong. Stallworth threatened to fire him if he caught him sitting down.

(i) This man denied the charge of exposing himself.

(j) This Union official told of threats to him; that employees wanted the names of two witnesses to the Press cheating matter.

(k) A set up operator told of lots or problems with Sears who cursed and raised hell with him. An hour later he would apologize. Denied asking a percentage of a money grievance settlement.

(l) This Class A Tool and Die man, and Steward, related an incident with Sears over a job rate in which

Sears grabbed his shoulders, shook him and told him to "get out of my face, or I'll knock you down." A meeting with Gish and Sears brought this statement from Sears: "I'm sorry if there was any mishap about it."

(m) A female who worked six months in 1974 said Stallworth touched her body; that she told her husband who also worked at the plant. Stallworth tried to get her to go to his after hours bar. Stillworth finally fired her.

(n) The above employee's husband tried to warn Stallworth about touching his wife; with Stallworth going into a swearing rage, ordering him back to his Press. A bad Press hit brought on a swearing rage by Sears who swore all over the place, later being forced to apologize. Sears also threatened to fire him if he filed a grievance.

(o) A night shift Steward told of Safety complaints, language and treatment of employees by Stallworth; that the bread line threat to fire the couple was told to him and Lewis by Stallworth; who also threatened to fire the entire night shift. Gish and Trego did nothing to Stallworth after he told them about his actions. It did no good to file grievances for they were either lost or never heard of again. If one grieved he was treated like a "dog" afterward. As a safety man he complained about the straps on Press 15 but was overruled by Stallworth.

(p) Threats of firing were made by Sears to a female Press operator who had other complaints regarding safety which were corrected. Allegations were brought out about her whiskey gifts to Gish, Stallworth, Sears and Gimperling; along with $70.00 worth of meats to Foreman Miller, all of which she admitted.

(q) A male arc welder, one year service, told of lack of flash screens on welders, thereby affecting his eyes; that to get new gloves from Foreman Isaiah he had to have

three fingers showing through the gloves; that the bare fingers would get burned; that 90% of the presses are unsafe.

(r) A female employee, one of the four on the Press where the alleged cheating took place said September 9th she worked one hour and was excused.

Rebuttal witnesses offered by the Company attempted to answer allegations chargeable to them, some of the evidence follows:

J. Gish, Superintendent, to his knowledge, did not hear of Foremen telling anyone he could not file a grievance. He said it was routine in the plant for Foremen and employees to use obscene language. He said the safety devices on Press 15 did not create a safety hazard; denied tearing up any grievances; didn't recall telling Triplett, who had been discharge, he could not file a grievance on Company time or property.

Carol Trego testified some 50 grievances were filed in 1975 with 15 settled by the Company and 15 dropped by the Union and with 20 pending; that no grievances were filed against Stallworth concerning his conduct, but some were filed for pay or overtime; the same was true of Foreman Sears; that O'Leary and O'Connor were sore spots to the Union, however, after they left in March of 1975 labor relations did not improve. She admitted all Foremen have been talked to by the Company about passes being made to female employees, later mentioning Stallworth, Sears and Gimperling. Between the two walkouts, Lange said allegations against Foremen were told him but he did not check with employees for no names had been given of females molested, nor has he taken action against Foremen for lack of proof.

Foreman Sears stated he never made the statement to Shafer "the Union was selling its members down the river." The towmotor complaint was turned over to the towmotor maintenance people, White Mobile Left, who suggested new pins be ordered. The new pins were not ordered for Sears suggested the Company make their own pins. He never heard if the pins were made. Denied he ever told anyone he could not file a grievance, nor threatened anyone if he grieved; denied saying to a black employee "You damn people can't do anything right"; admitted a threat about one employee hoping to get a problem solved. One ex-employee threatened to blow up his house. He never called an employee a vile or obscene name; nor has he ever grabbed an employee by the shoulders, threatening to knock him down; didn't threaten anyone not making the rate about being fired.

A. Stallworth told of down time problems in the Paint Shop when he became a Foreman three years ago; he reassigned employees to other work during such periods which antagonized the employees. He admitted refusing one discharged employee the filing of a grievance on Company property, however, Gish overruled him. The discharge brought on choice name calling to Stallworth concerning race along with a threatening phone call.

One female employee (c) had never been propositioned by him to go out; that he had absentee problems with her and gave her a reprimand, although she said she had been hit on the head with a hammer. On the complaint of her receiving a shock he solved it by moving the table. As for the kidnapping and molestation charge he denied it, and explained (c)'s friend had asked her to drive him a distance of ten blocks which she did, a charge that he threatened a male employee it was the last thing he did, was denied, but he did tell him to quit cowboying the tow-

motor and to slow it down, otherwise reprimands would follow, eventually leading to his discharge. An overtime pay claim in which the employee sought to grieve through his Steward Stallworth requested a replacement Inspector, if the Inspector was going to leave the department; that the Steward the grievant got was the second one for the first one refused the grievance. He told the employee who wanted to go outside the plant after punching out, to prepare his grievance along with the Steward. He had paid for discussion time for the other Steward and grievant some 20-25 minutes.

If he overrules Inspection and runs a job he initials a card. Denied touching a female worker, not ask to take her home or go to his after hours bar, which he did not have in December, 1974. All he told the girl's husband was to watch his absenteeism and take care of his job; he didn't recall saying he would "put both of them on bread lines". He helped to get the wife a job at the plant.

Stallworth stated that prior to the strikes the percentage of whites and blacks was 60-40. Steward Doshak did knock reprimand papers out of his hand and was suspended the balance of the shift. He did not threaten Doshak's job on the towmotor incident, about running out of gas.

According to Stallworth the reason employees have been making charges against him is to get him, as related to him by two employees who named some who were out to get him.

According to Stallworth over half of the employees at the Company are ex-felons. He admitted being sentenced one to fifteen years for breaking and entering and burglary; another one unarmed robbery one to twenty five years; and two other charges, allegedly bearing Court case numbers were denied; that he is not now on parole.

Of the approximately one hundred fifty (150) employees as of September 9, 1975, a Company list showed twenty one (21) on the night shift, in addition to the twenty four (24) who walked out, of which thirteen (13) were probationary employees and eight (8) were off for various reasons. Similar computations were not developed about the day shift which no doubt would show similar figures to arrive at the total of one hundred fifty (150) employees. Of the total employees, forty percent (40%) were black with over half of the personnel ex-felons, (Stallworth) however, it should be noted the employment application show twelve (12) admitted ex-felons in addition to Stallworth. The high number of probationary employees indicates considerable turnover of personnel. A Company exhibit listed seventy three day shift employees discharged September 16th, whereas, eighty eight were terminated, fifteen (15) of whom were rehired shortly thereafter.

The year 1974 developed some serious problems over the new contract including skilled trades, Holiday Pay, and Vacations. Any misunderstanding as to whether or not the 50¢ offer for skilled trades employees was a continuing one does not alter the fact the Union and some employees interpreted it as a continuing offer in which O'Leary reneged. The Company insisted on a literal interpretation of the Holiday Pay and Vacation hours worked for eligibility, whereas, the Union felt the past practice should remain. Twenty grievances were unresolved for failure to agree.

The attitude of employees regarding safety, threats of Foremen to discharge one who grieved, transfer to jobs where one could not make a bonus were alleged if one grieved; harassment of Stewards and employees who sought to grieve on Company premises in discharge cases,

propositioning of female employees and touching one charged against a Supervisor, and a kidnapping and molestation of a female by a Supervisor were encompassed in a multitude of sworn testimony.

The kidnapping case was not substantiated by a witness who identified himself one hearing day but failed to testify in support of his girl friend.

Although one employee claimed 90% of the presses are unsafe, the Arbitrator cannot accept this as true for lack of proof. However, a most significant instance of safety negligence was Sears' failure to order pins for a faulty towmotor as recommended by White Motor Lift. Foreman Isaiah, who issued gloves did not testify and refute charges of the necessity for three bare fingers to be showing before he issued new gloves. Superintendent Gish verified a charge that discharged employees were not permitted to grieve on Company premises.

A reason advanced by employees for failure to return to work following the walkout was threats of bodily harm. The Union in its opening statement admitted the threats could not be idle threats but real threats. Names were not divulged of those who did the threatening. Witnesses did say the threats were to inflict bodily harm on anyone who went to work.

The precipitating factor leading to the walkouts was the first Company decision August 28, 1975 to discharge four (4) Press operators. This was shortly resolved with reinstatement of the four (4) with back pay pending investigation by Herndon the next week. The Company warned the Union it would not tolerate any further walkouts. While the arbitration case of the four (4) Press operations is not before me, I must comment to the extent it was not completely investigated jointly by Union and

Company representatives but by Herndon, Company Counsel and Secretary. The result was unofficially told the Union prior to September 9th, however officially given the Union in the afternoon when Trego and Lange told the Union the result and penalties. The two men were discharged at 5:15 p.m. The two females who were suspended were not present, one was not at work that night, and the other went home after two hours' work. Shortly after, the walkout of twenty four followed. No leaders were observed, or later discerned. Failing to return to work by 7:30 p.m. Company President Lange fired all twenty four employees.

The number of female employees was not offered. There were some females present during the hearing days, however, the percentage to the total is not in the record.

While the decision on four (4) Press Operators precipitated the walkouts the employees contended many Company improper actions and weaknesses of the Union Officers to cope with contract violations were underlying factors. The second walkout lasted five working days during which period all who testified and participated in the unauthorized strike steadfastly maintained they could not return to work, albeit Court order and Union exhortations to do so were known, due to threats of bodily harm. This defense is understandable due to the plant being highly integrated with ex-felons among them. To name those doing the threatening, if known, could have brought on retaliatory measures. About one sixth of the work force walked out, however, the evidence is they were at the plant before 6:30 a.m. the next day and "persuaded" the day shift to join them. The Arbitrator recognizes the "threats" as occurring after the fact, the walkout.

The Arbitrator concludes and finds the Company did not have clean hands. It permitted violations of the contract to continue by Supervisors long after it was apprised of them. One of the principal antagonists toward employees in contract violations was an ex-convict Foreman who operated an after hours bar. The Company steadfastly supported his brazen acts in thwarting attempts by employees to utilize the grievance procedure. The futility of the grievance procedure was manifest when Foreman Stallworth threatened transfer and discharge if any filed a grievance. His actions made a mockery of the grievance procedure. The evidence established that he was the prime Union "baiter" among Supervisors.

The intimidation by Supervision in effectively thwarting the employees use of established contractual procedures caused complete frustration to the point that employees took matters into their own hands. While this Arbitrator does not condone self-help by these employees, even though they had reason to vent their feelings, the penalty of discharge was inappropriate.

All discharged employees, except Koslik and Dale, are reinstated with seniority, including fifteen (15) re-hired, but without back pay, effective not later than five working days from receipt of this award.

THE CASE OF F. KOSLIK AND D. DALE

Under date of September 13, 1975 the Company wrote the two female Press operators they were discharged for participating in an unauthorized strike. This was the only type letter sent to any dischargees (CO-26). They had been observed outside the plant prior to discharge. Their twenty calendar days suspension was told the Union September 9th. Neither employee was at work around 5:45

p.m. when the walkout took place; Dorothy Dale was absent and Frances Koslik left work, excused due to illness; after two hours.

The two employees did not grieve their suspension of twenty days which had been told to the Union Committee per the Company. The two have grieved their discharges according to Union Counsel.

President Lange testified the two were discharged for participating in the September 9th walkout, although they were not at work, which he later admitted.

All day shift employees, some of whom had been observed picketing or otherwise milling about the area, away from the plant entrance, were sent a letter September 13 ordering them to report for work September 16th 6:30 a.m. or they would be terminated.

The discharges of Koslik and Dale are discriminatory in that they are not charged with participating in the walk out of September 9th and they did nothing more than others not fired namely stand around or picket (day shift).

Provided they grieved their discharge and did so file it timely, the Arbitrator orders Koslik and Dale reinstated with seniority and back pay from October 1, 1975 to date of reinstatement. The phone call to Koslik to return to work received about September 12th from an unidentified Company person was unofficial and could not change the 20 days suspension told the Union.

AWARD

The grievances are sustained in part as follows: all discharged employees of August 28 and September 16, 1975, except Koslik and Dale, discharged September 13, 1975, are reinstated with seniority, including fifteen re-

hired, but without back pay, effective not later than five (5) working days from receipt of this Award.

F. Koslik and D. Dale are reinstated with seniority and back pay from October 1, 1975, the termination date of their 20 days suspension.

/s/ GEORGE F. HAYES
George F. Hayes, Arbitrator

Dated at Cuyahoga County, Ohio this 28th day of May, 1976.

ORDER OF THE UNITED STATES DISTRICT COURT

(Filed September 18, 1978)

Civil Action C76-170A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FALLS STAMPING & WELDING,
Plaintiff,

vs.

THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *et al.*,
Defendants.

ORDER

This action is before the Court pursuant to the Mandate of the United States Court of Appeals for the Sixth Circuit issued June 30, 1978. Thereby the judgment of this Court in the within action was reversed and such was remanded with instructions to reinstate the award of the arbitrator. See *Falls Stamping & Welding Co. v. UAW*, 575 F.2d 1191 (6th Cir. 1978). Pursuant to said Mandate, the arbitration decision of George Hayes entered on May 28, 1976 is hereby reinstated.

Incident thereto, defendants have requested that the Court award all employees reinstated under said arbitration decision back pay with interest and any other economic entitlements due them from June 8, 1976 to the

date of actual reinstatement. They contend that such relief is necessary to the full implementation of the arbitration award and implicit in the order of the Sixth Circuit Court of Appeals.

In response to plaintiff's petition to vacate and/or modify the arbitrator's award which initiated this action on June 7, 1976, defendants counterclaimed for enforcement of the award and for compensatory and punitive damages for the allegedly malicious delay in execution. The Court, in its Memorandum Opinion and Order of July 6, 1976, concluded that said counterclaims were meritless in view of its decision vacating the arbitrator's award. *Falls Stamping & Welding Co. v. UAW,* 416 F.Supp. 574 (N.D. Ohio 1976). Judgment was thus entered for plaintiff and against defendants thereon. In their subsequent appeal of the judgment vacating the arbitration award, however, defendants did not appeal the denial of the counterclaims. Thus defendants did not raise the issue of back pay and fringe benefits before the Sixth Circuit Court of Appeals.

Plaintiff, therefore, asserts three grounds allegedly precluding any present award of back pay and other fringe benefits. First, it alleges that defendants' failure to appeal the counterclaims determination forecloses reconsideration of such issue under the principle of res judicata or finality of judgment. Second, plaintiff asserts that, since this Court is bound by the specific instructions of the Court of Appeals on remand, it is without authority to award back pay and other fringe benefits under the Mandate issued herein. Third, it contends that back pay is neither permissible nor necessary since the arbitration award allegedly did not become effective until the filing of the Mandate with this Court by which time the employees involved had been reinstated.

When a federal court enunciates a rule of law to be applied in a particular case, it establishes the law which lower courts must, and which it itself will, normally apply to the same issues during subsequent proceedings therein. 1B *Moore's Federal Practice* ¶0.404[1], at 402-403 (2d ed. 1974). This is known as the federal doctrine of law of the case, and it is applicable to legal principles set forth by both the trial court and the appellate courts. Although the doctrine is designed to preclude reconsideration of identical issues, it is not an inexorable command. *Petition of United States Steel Corp.*, 479 F.2d 489, 493-94 (6th Cir. 1973). Rather, it is addressed to the sound discretion of a court and does not compel strict adherence to former decisions. *Id.* In other words, the doctrine empowers a court to apply a different rule of law where substantial justice so requires. 1B *Moore's, supra* ¶0.404[1]. However, since it includes consideration of the recognized public interest in the finality of litigation, a cogent reason showing the inapplicability of a previous ruling must be found. *Petition of United States Steel Corp., supra* at 494. Such reasons which merit a departure from a prior legal ruling include a subsequent contrary decision or view of the law by a controlling authority; substantially different evidence; or a clearly erroneous determination which would invoke a grave or manifest injustice. *Id.*

It is well settled that when a case is remanded, the trial court must proceed in accordance with the mandate and law of the case established by the appellate court. *Petition of United States Steel Corp., supra* at 493. The trial court is thus bound to follow the determination of the appellate court as to all issues decided by it. The issues not expressly or impliedly decided on appeal, however, are governed by the law of the case established by the trial court. As succinctly explained by Professor Moore:

> A judgment may, however, be reversed by an appellate court on a single ground, and remanded with other determinations of the trial court left intact. In such a case, the unreversed determinations of the trial court are generally adhered to on remand; but this is an application of the doctrine of law of the case, rather than res judicata or collateral estoppel. And since the unreversed prior determinations were made by the trial court, the law of the case doctrine addresses itself to that court's discretion only, and does not compel adherence. The appellate court's directions for disposition of the case on remand are also the law of the case in proceedings on remand, but since these directions emanate from a court to which the trial court owes obedience, its adherence is compelled, rather than a matter of discretion.

1B *Moore's, supra* ¶0.416[2], at 2231. [Footnotes omitted.] Thus a trial court may on remand depart from its previous rulings which were not addressed by the appellate court when to do so would not be contrary to the mandate. Indeed, it would appear appropriate for a trial court to reexamine its law of the case instead of inviting a subsequent or second reversal when convinced that its law of the case is erroneous. Cf. 1B *Moore's, supra* ¶0.404[1], at 407.

In the case at bar, this Court's initial finding that defendants' counterclaims were without merit was not challenged in and determined by the Court of Appeals. Such unreversed prior determination constitutes the law of the case. The Court is thus not compelled to adhere thereto, but may, in its discretion, for good cause depart therefrom.

As stated above, the predicate for the Court's denial of back pay was its vacation of the arbitrator's award. The Sixth Circuit's reversal of said latter determination

has effectively nullified the basis for such denial. Thus, the Court finds its prior conclusion that defendants' counterclaims were meritless to be now without a sound legal foundation and substantially erroneous.

Further, if an arbitration award is upheld by a reviewing court, the rights of the parties are fixed from the date of the award and not that of the court judgment confirming it. *Marion Manufacturing Co. v. W. B. Long,* No. 76-2347, slip op. at 5 (6th Cir. Sept. 8, 1978). In this action then, the decision of the Sixth Circuit Court of Appeals rendered the arbitration award conclusive and effective from the date thereof, and not from the date of its reinstatement by this Court. Thus pursuant to the award, all employees discharged on September 10 and 16, 1975, except the two female employees on suspension for cheating at the time of the September 9 and 10, 1975 strike, were entitled to reinstatement with seniority on June 8, 1976. The plaintiff, however, failed to reinstate them; such failure has resulted in loss or damage to said employees.

In view of the foregoing, the Court is of the opinion that a grave or manifest injustice will obtain from adherence to its previous denial of back pay and other fringe benefits. Therefore, the Court concludes that all the aforesaid employees are entitled to the back pay and other fringe benefits they would have earned from June 8, 1976 until their actual reinstatement. Such damage award, however, must be diminished by the amount actually earned by the employees elsewhere during said period. Further, the employees are not entitled to interest on the back pay damage award. *NF & M Corp. v. United Steelworkers of America,* 390 F.Supp. 266, 270 (W.D. Pa.), aff'd, 524 F.2d 756 (3rd Cir. 1975).

With regard to the two above described female employees, F. Koslik and D. Dale, the arbitration award ordered their reinstatement with seniority and back pay from October 1, 1975. Upon consideration, the Court determines that these two employees are entitled to the back pay and any other benefits they would have earned from October 1, 1975 to the date of their actual reinstatement. Such damage award must, of course, be likewise diminished by any amount earned elsewhere during said period, and no interest is to be added thereon.

Accordingly, the Court hereby adopts the following procedure for the implementation of its foregoing determinations:

1. Defendants shall file and deliver to counsel for plaintiff on or before September 21, 1978 a list of all affected employees claiming a right to reinstatement and back pay.

2. Plaintiff shall file and deliver to counsel for defendants on or before October 12, 1978 a separate accounting for each such employee showing the total amount assertedly due him for back pay and fringe benefits, and the manner in which said total was determined. In other words, each statement shall contain a detailed breakdown of the hourly wage rate for an employee with the applicable dates therefor; all increases or raises in such rate which occurred during the subject period must be included in the calculations. Insufficient statements shall not be accepted by the Court.

3. Defendants shall file and deliver to counsel for plaintiff on or before October 12, 1978 an affidavit from each such employee containing the following information: name; age; work experience by employer since June 8, 1976, including dates employed and hourly wage rate or

salary; and a detailed statement of earnings from June 8, 1976 until reinstatement by plaintiff. Further, there shall be attached to said affidavit each available Internal Revenue Service W-2 Form documenting the employee's earnings. Insufficient affidavits will not be accepted by the Court.

4. Counsel for plaintiff and defendants shall meet and confer within seven (7) days after October 12, 1978 in an effort to determine the amount to be paid by plaintiff to each employee based upon the above-described data. Thereafter, counsel shall file within (3) days of said meeting a report indicating their agreement as to the amount due each employee. Should counsel be unable to agree as to any employees, they shall so inform the Court and state in detail the basis for their disagreement.

IT IS SO ORDERED.

/s/ LEROY J. CONTIE, JR.
U. S. District Judge

JUDGMENT ENTRY OF THE UNITED STATES DISTRICT COURT

(Filed February 21, 1980)

Civil Action C76-170A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FALLS STAMPING & WELDING COMPANY,
Plaintiff,

vs

THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *et al.*,
Defendants.

JUDGMENT ENTRY

The Court having reviewed the Special Master's report and approved and adopted it with modifications, and having granted defendants' motion for action, and having denied defendants' motion to reconsider, and having sustained in part and overruled in part plaintiff's objections, and having overruled defendants' objection,

IT IS ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for defendant claimants and against plaintiff as follows:

1. Molly Anderson	$ 6,178.09
2. Greg Balmer	-0-
3. Bobby Bell	5,680.54

4.	Juanita Bierlair	8,115.74
5.	Harry Blakney	-0-
6.	Paul Boxler	1,465.25
7.	Howard Brockman	-0-
8.	Ronald Brouse	13,795.66
9.	Joyce Bullard	8,246.87
10.	Bobby Bullard	11,105.17
11.	Stephan Bunner	3,258.99
12.	Basil Busch	5,948.50
13.	Jane Carlton	9,786.72
14.	Janet Carr	6,450.32
15.	Victor Caruso	9,848.35
16.	Clarence Chadwell	-0-
17.	Anthony Ciarallo	1,645.24
18.	James Clemente	7,552.23
19.	Jerry Conner	97.31
20.	Robert Creek	740.35
21.	Christopher Crim	1,059.20
22.	Daniel Crim	837.93
23.	Andrew Csonka	-0-
24.	Timothy Curtis	737.84
25.	Dorothy Dale	-0-
26.	Martha DeChurch	13,070.76
27.	Andrew DeRita	2,203.29
28.	David DeRita	-0-

29. Dorothy DeRita	8,226.46
30. John Dimmick	4,400.56
31. Cleophus Dixon	-0-
32. Joseph Dolgas	3,810.78
33. John Doshak	7,124.63
34. Kenneth Douglas	6,303.04
35. Steven Edwards	-0-
36. Robert Ellis	-0-
37. Ernest Farr	5,102.33
38. Norman Fears	9,802.03
39. William Fears	4,745.60
40. Russell Foti	2,004.10
41. Geraldine Fulton	10,968.84
42. Richard Ginn	8,936.28
43. Wenona Green	4,494.86
44. Willian Gween	6,698.11
45. Thomas Heffernan	11,748.48
46. Gregory Henderson	-0-
47. Steven Henderson	-0-
48. Robert Hutchinson	-0-
49. Lee Jackson	-0-
50. William Jordan	-0-
51. Louis Karamas	6,251.57
52. Glen Kelly	3,703.33
53. Foy King	-0-

54.	John King	13,749.88
55.	Francis Koslik	1,859.44
56.	John Latchaw	-0-
57.	Bernard Lawson	-0-
58.	Alfred Lee	13,174.01
59.	Larry Lemon	-0-
60.	Rosella Lewis	2,152.83
61.	Herbert Mann	-0-
62.	David Marsh	9,829.31
63.	Ray Marzella	-0-
64.	William Marks	-0-
65.	Thomas Maul	442.34
66.	Justin Maxwell	742.25
67.	John Milan	10,807.94
68.	Anthony Miller	3,808.04
69.	Charles Miller	5,720.99
70.	Lee Miller	5,397.86
71.	Clarence Mitchell	-0-
72.	Robert Montgomery	15,735.61
73.	Paul Moyer	6,241.34
74.	Ferne Nemeth	-0-
75.	George Oravecz	2,056.10
76.	Jack Panton	-0-
77.	Ben Partin	-0-

78.	Casper Phillips	-0-
79.	Edward Pieczyniski	-0-
80.	Richard Powell	-0-
81.	William Rees	832.75
82.	Armond Ricchiuto	13,251.42
83.	Gilbert Rice	1,092.37
84.	John Roberts	-0-
85.	Joseph Robinson	4,326.18
86.	Betty Rucker	7,789.64
87.	Robert Salata	-0-
88.	William Santangelo	1,791.34
89.	Michael Sehika	15,481.48
90.	Roger Seymour	3,299.76
91.	Barry Shaffer	7,557.05
92.	Donald Showman	1,388.33
93.	Llewellyn Simmons	7,174.85
94.	Bernard Slider	1,421.91
95.	Joseph Spalding	13,216.83
96.	Marie Sprague	-0-
97.	Ned Stallworth	8,400.80
98.	Steven Starks	-0-
99.	Howard Stricker	-0-
100.	Dino Tambini	2,567.09
101.	Steve Tatar	788.36

102.	Dean Tittle	-0-
103.	Charles Trevaskis	8,516.25
104.	James Waldron	-0-
105.	William Watts	7,171.42
106.	Mary White	10,504.83
107.	Terrance White	5,400.84
108.	Don Williams	-0-
109.	William Wolfe	7,413.57
110.	Bernard Wyne	-0-

/s/ LEROY J. CONTIE, JR.
U. S. District Judge

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ON SECOND APPEAL

(Filed October 22, 1981)

No. 80-3274

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FALLS STAMPING & WELDING COMPANY,
Plaintiff-Appellant,

vs.

THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *et al.*,
Defendants-Appellees.

ORDER

Before: EDWARDS, *Chief Circuit Judge,* ENGEL, *Circuit Judge,* and PHILLIPS, *Senior Circuit Judge.*

On receipt and consideration of a second appeal in this case; and

Finding from the record that the District Judge properly construed and carried out this court's per curiam opinion filed May 24, 1978, *Falls Stamping & Welding Co. v. The International Union, UAW,* 575 F.2d 1191 (6th Cir. 1978),

Now, therefore, the order entered by Judge Contie is in all respects affirmed. In particular we agree with and

adopt the portion of the District Judge's opinion which follows:

> In the case at bar, this Court's initial finding that defendants' counterclaims were without merit was not challenged in and determined by the Court of Appeals. Such unreversed prior determination constitutes the law of the case. The Court is thus not compelled to adhere thereto, but may, in its discretion, for good cause depart therefrom.
>
> As stated above, the predicate for the Court's denial of back pay was its vacation of the arbitrator's award. The Sixth Circuit's reversal of said latter determination has effectively nullified the basis for such denial. Thus, the Court finds its prior conclusion that defendants' counterclaims were meritless to be now without a sound legal foundation and substantially erroneous.

Entered by order of the Court

/s/ JOHN H. HEHMEN
Clerk

Opposition

Office - Supreme Court, U.S.
FILED
FEB 18 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-1348

In the Supreme Court of the United States

October Term, 1981

FALLS STAMPING AND WELDING COMPANY,
Petitioner,

vs.

THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

The Petitioner, Falls Stamping and Welding Company, states the following as the questions presented for review:

I. Whether a union has standing to maintain a damage action on behalf of discharged strikers pursuant to Section 301, Labor Management Relations Act.

II. Whether an employer has a federal substantive right to discharge employees striking in violation of a collective bargaining agreement.

Respondents do not agree that the review sought by Petitioner on the record adduced below presents either question. As we shall show, the only questions that may be brought to this Court are those involved in the record of the proceedings relating to the Sixth Circuit Court of Appeals' Order of October 22, 1981 (A. 81). The facts and issues involved in that order simply do not raise the questions stated by Petitioner.

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No. 81-1348

In the Supreme Court of the United States

October Term, 1981

FALLS STAMPING AND WELDING COMPANY,
Petitioner,

vs.

THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

Respondents, The International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local Union No. 1194, United Automobile, Aircraft and Agricultural Implement Workers of America (hereinafter "Union"), and Thomas E. Heffernan, President of Local Union No. 1194, hereby file their brief in opposition to granting the Writ of Certiorari in the above-captioned matter.

The Opinions below, the basis of this Court's jurisdiction and the Statutes and Provisions involved are set out at pages 2 and 3 of the Petition. All references by Respondents to the Appendix of the Petition are indicated by the symbol "A".

COUNTER-STATEMENT OF THE CASE

The Company's Petition for Writ of Certiorari seeks to have this Court review two judgments of the United States Sixth Circuit Court of Appeals. The first judgment, rendered May 24, 1978 (A. 1), reversed the district court's vacation of an Arbitrator's award and ordered enforcement of that award. The second judgment, dated October 22, 1981 (A. 81), affirmed the district court's decision awarding monetary damages to individual employees damaged by reason of the Company's failure to comply with the Arbitrator's award pursuant to the court of appeals' remand on May 24, 1978. The issues raised by the Company's Petition flow from the Company's discharge of some 112 employees for engaging in a work stoppage on September 9, 1975 called by the Company's production and maintenance employees. The terms and conditions of employment of the Company's production and maintenance employees at the time of the work stoppage were prescribed by the provisions of the collective bargaining agreement between Respondent Union and Petitioner. Section 25 of that agreement prohibits strikes and work stoppages during the term of the agreement. Section 25 of that agreement recites in pertinent part:

> "The Company shall have the right to discharge or otherwise discipline any employee who does engage in a strike, slowdown, stoppage of work, or interference with the Company's operation during the term of this Agreement. Any discipline or discharge as a result of the foregoing is subject to the grievance procedure."

Pursuant to the agreement the discharged employees filed grievances contending that they were wrongfully discharged. The grievances were duly processed by Respon-

dent Union under the contract's grievance procedure to arbitration.

For nine days, between October 31, 1975 and January 7, 1976, the Arbitrator heard the evidence and arguments presented by both the Company and the Union. The Arbitrator heard the testimony of some 25 witnesses, and received into evidence some 50 exhibits. The transcript itself consisted of 1,835 pages. On May 29, 1976 the Arbitrator issued a 69 page decision and award ordering the Company to reinstate the discharged grievants without back pay within five days of the receipt of the Arbitrator's award.

Ignoring the award, the Company filed a petition in the United States District Court for the Northern District of Ohio to have the award vacated. The Union opposed the petition to vacate and filed a counterclaim for enforcement of the award. The trial court, sustaining the Company's petition, vacated the award and entered judgment against the Union on its counterclaim.

The Union appealed the trial court's vacation of the award. On May 24, 1978 the United States Court of Appeals for the Sixth Circuit, holding that the Arbitrator's award drew its essence from the collective bargaining agreement, reversed the district court's decision and remanded the cause with instructions to implement the Arbitrator's award (A. 1).

On remand, the trial court concluded that proper implementation of the award required that the Union's counterclaim be reinstated and that the employees be awarded back pay for the two year period during which the Company had failed and refused to reinstate the employees. A special master was appointed to determine the actual losses incurred by each individual employee. The master's

findings and conclusions were adopted by the trial court and reduced to judgment (A. 88).

The Company appealed. The principal issue before the court of appeals on this appeal was whether the district court had the right to reinstate the Union's counterclaim and to award the individual employees back pay. The Sixth Circuit on October 22, 1981, affirmed the district court's decision ruling that ". . . the District Judge properly construed and carried out this Court's per curiam opinion filed May 24, 1978 . . ." (A. 94). Petitioner now seeks review of the separate orders of the Sixth Circuit dated May 24, 1978 and October 22, 1981 respectively.

ARGUMENT

PETITIONER'S APPLICATION FOR A WRIT OF CERTIORARI BORDERS ON THE FRIVOLOUS AND ACCORDINGLY SHOULD BE DENIED.

1. The Union Clearly Had Standing to Seek Judicial Enforcement of the Arbitrator's Award and to File a Counterclaim for the Damages Suffered by the Employees Whom It Represents.

Petitioner readily admits that jurisdiction over the Union's counterclaim for damages to bargaining unit employees is conferred by Section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185 (See Petition, p. 10). There is no concession in the admission. Section 301 expressly gives standing to a labor organization to sue on behalf of the employees it represents. Section 301 provides in pertinent part:

> "(b) . . . Any such labor organization may sue or be sued as an entity and in behalf of the employees

whom it represents in the courts of the United States . . ."

There has never been a serious question as to whether a union has standing under Section 301 to seek judicial enforcement of employee collectively bargained contractual rights. This Court has repeatedly recognized union standing to seek judicial vindication of such rights. *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960).

In *Smith v. Evening News*, 371 U.S. 195 (1962), this Court listed a variety of actions a union may bring to vindicate collectively bargained contractual rights of individual employees. There the Court pointed out that Section 301 authorizes unions:

> ". . . to compel arbitration of such individual grievances as rates of pay, hours of work and wrongful discharge, *Textile Workers v. Lincoln Mills, supra; General Electric Co. v. Local 205, UEW*, 353 U.S. 547; to obtain specific enforcement of an arbitrator's award ordering reinstatement and back pay to individual employees, *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593; [and] to recover wage increases in a contest over the validity of the collective bargaining contract, *Dowd Box Co. v. Courtney*, 368 U.S. 502, 7 L. Ed. 2d 483, 82 S. Ct. 519, *supra;*" 371 U.S. 195 at 199.

Furthermore, in *International Union v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966), this Court specifically addressed the question whether a union may bring an action under Section 301 to recover, on behalf of individual employees, wages and vacation pay, where the claims were

directly related to each individual's rights under the contract of employment. In rejecting the argument that a union could not bring such an action the Court declared:

> "There is no merit to the contention that a union may not sue to recover wages or vacation pay claimed by its members pursuant to the terms of a collective bargaining contract. Such a suit is among those 'suits for violation of contracts between an employer and a labor organization' that Section 301 was designed to permit. This conclusion is unimpaired by the fact that each worker's claim may also depend upon the existence of his individual contract of employment." 383 U.S. 696 at 699-700.

Petitioner's characterization of the Union's counterclaim as the assertion of a common law right of individual employees does not change the Union's standing under Section 301. The rights asserted by the Union on behalf of the individual employees, as admitted by Petitioner, are Section 301 rights under long settled and established principles. The Union's standing to assert such rights cannot be challenged.

2. The Petition for Writ of Certiorari With Respect to the Court of Appeals' Decision of May 24, 1978 Is Untimely and Precludes the Assumption of Jurisdiction by This Court Over the Issues Raised in That Proceeding.

The issue of whether or not the Petitioner had the right to discharge its employees was considered in the suit filed by Petitioner on June 7, 1976 to vacate the Arbitrator's award. The issue was resolved by the court of appeals against the Company on May 24, 1978. No appeal was taken from that decision. Petitioner's request for review at this time is untimely.

Congress has provided that a petition for a writ of certiorari must be filed within ninety days after the judgment sought to be appealed from is entered. 28 U.S.C. 2101(c) provides in pertinent part:

> "Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. . ."

This provision has been held by this Court to be jurisdictional. *Matton Steamboat Company, Inc. v. Murphy,* 319 U.S. 412 (1943); see also *Department of Banking v. Pink,* 317 U.S. 264 (1942); *Citizens Bank v. Opperman,* 249 U.S. 448 (1919); and *Deal v. Cincinnati Board of Education,* 402 U.S. 962 (1971). Here the Company seeks review of a judgment that is almost four years old. Under the controlling decisions of this Court, the Court does not have jurisdiction to review the circuit court's decision of May 24, 1978 or to consider on the record before it the question whether the employer has a federal substantive right to discharge employees engaging in a strike in violation of a collective bargaining agreement.

3. Assuming Arguendo That This Court Does Have Jurisdiction to Consider the Petitioner's Second Reason for Granting the Writ, the Record Does Not Raise the Question Whether the Company Has the Right to Discharge Employees Engaging in a Strike in Violation of a Collective Bargaining Agreement. Here It Was Determined That the Collective Bargaining Agreement Did Not Authorize Discharge of the Employees Under the Circumstances at Bar.

There is nothing inconsistent in the holdings of the courts below with the views expressed by this Court in

Complete Auto Transit v. Reis, 451 U.S. 401 (1981). *Complete Auto Transit* did not involve a collective bargaining agreement which expressly subjected any discipline or discharge of employees for engaging in strikes or work stoppages to the grievance procedure. There is no support for Petitioner's contention that the court below negated Petitioner's right to discharge employees who violated the no-strike provision of its collective bargaining agreement in either the record at bar or in the principles announced by this Court in *Complete Auto Transit*. The court of appeals concluded only that the employer had agreed that discipline imposed by it for alleged violations of the contract's no-strike provisions were reviewable by an arbitrator. *Complete Auto Transit* does not preclude this conclusion.

The Court below properly held that the Arbitrator's award drew its essence from the collective bargaining agreement and, under the principles enunciated by this Court in *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960), that the trial court's vacation of the Arbitrator's award had to be reversed. This conclusion was required to implement federal policy favoring arbitration as a preferred means of resolving labor disputes. *United Steelworkers v. Enterprise Wheel & Car Corp., supra; United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960). Petitioner's apparent dissatisfaction with the holding of the lower court does not provide a reason for reconsideration of well established principles.

CONCLUSION

For the foregoing reasons and upon the authorities cited it is respectively submitted that the Petition for the Writ of Certiorari should be denied.

Respectfully submitted,

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